

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

* * * * *	CIVIL ACTION
JOHN DOE	16-0017
VS.	JULY 19, 2016
BROWN UNIVERSITY	PROVIDENCE, RI
* * * * *	

HEARD BEFORE THE HONORABLE WILLIAM E. SMITH

CHIEF JUDGE

(Bench Trial)

VOLUME I

REDACTED

APPEARANCES:

FOR THE PLAINTIFF:	J. RICHARD RATCLIFFE, ESQ. JEFFREY BIOLCHINI, ESQ. Ratcliffe Harten Burke & Galamaga, LLP 40 Westminster Street Suite 700 Providence, RI 02903
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1 19 JULY 2016 -- 9:00 A.M.

2 THE COURT: Good morning. We're here in the
3 matter of John Doe versus Brown University. We're here
4 for trial.

5 And let's begin by having all counsel identify
6 themselves for the record, please.

7 MR. RATCLIFFE: For the Plaintiff, John Doe,
8 Richard Ratcliffe.

9 MR. BIOLCHINI: For the Plaintiff, John Doe,
10 Jeff Biolchini.

11 MR. RICHARD: Good morning, your Honor. For the
12 Defendant, Brown University, Steven Richard. With me
13 today are in-house counsel, James Green, and General
14 Counsel for Brown University, Beverly Ledbetter.

15 THE COURT: All right. Thank you.

16 So before we begin, there's just one or two
17 preliminary matters I need to address on the record. A
18 motion has been filed by the Plaintiff to proceed
19 pseudononymously at trial. I previously granted the
20 motion to file pleadings pseudononymously.

21 My understanding is Brown has not objected to
22 the Plaintiff's motion; is that correct?

23 MR. RICHARD: That is correct, your Honor.

24 THE COURT: All right. So we are going to
25 proceed in this trial pseudononymously. I consulted

1 with counsel about how to proceed with that
2 logistically, and the way we're going to handle it for
3 the most part is to use first names with respect to the
4 individuals who are involved in the matter, and
5 witnesses and counsel will be advised to make best
6 efforts to utilize only first names.

7 All right. With that out of the way, are we
8 ready to proceed? Do counsel wish to give a brief
9 opening statement?

10 MR. RATCLIFFE: Yes, your Honor. One matter of
11 housekeeping. The exhibits that I put on the witness
12 stand for the witness, I would ask to retrieve those,
13 and I'll publish those exhibits with the ELM0.

14 THE COURT: That's fine. Go ahead.

15 MR. RATCLIFFE: Good morning, your Honor.

16 In the spring of 2013, Brown University offered
17 my client admission to the Class of 2017. He was
18 accepted to other top tier universities, including the
19 University of Chicago and Cornell. He accepted Brown's
20 offer to attend Brown University, and his goal was to
21 complete his education in four years and apply to law
22 school. His family prepaid, actually prepaid four
23 years of tuition at a cost of \$177,600.

24 I guess Brown had a program whereby you could
25 prepay your tuition at the amount that it was when he

1 was a freshman. Each year he paid, the three years he
2 was at Brown, he paid room and board.

3 This case involves -- and I'm going to try not
4 to get into too many of the details of the encounter
5 and the events leading up to the encounter. There will
6 be exhibits admitted that have text messages attached
7 to the exhibits regarding the interaction between Beau
8 and another young woman at Brown University that
9 occurred in November of 2014. Those text messages are
10 sexually-charged on both sides.

11 In any event, the parties did meet up, you'll
12 hear testimony, and it's part of the -- you'll see that
13 there's a report that was prepared that about 1:20 in
14 the morning on November 10, 2014, John and this woman,
15 Allie, met to watch a movie. They started to watch the
16 movie, and a sexual encounter occurred where Allie gave
17 Beau oral sex.

18 There'll be -- in the report, there's evidence
19 of a witness after the event, when Allie went back to
20 her room and recounted what had happened that evening
21 with Beau or early morning with Beau, referred to the
22 encounter as a hookup. And through -- excuse me --
23 Djuna Perkins, who was the investigator, you'll hear
24 about different witnesses who recounted Allie's
25 description of the event as a hookup.

1 There are also post-encounter texts between
2 Allie and Beau where the inference can certainly be
3 drawn from those post-encounter texts that Allie was
4 pursuing Beau and that Beau wasn't interested.
5 Fast-forward -- so this encounter occurred in November
6 of 2014. So at that time Allie was a freshman, and
7 Beau was a sophomore.

8 Fast-forward to 2015, late September. Allie
9 files a complaint with the Title IX Program Officer,
10 who is Amanda Walsh, accusing Beau of sexual assault on
11 November 10, 2014. So we're into 2015, so it's nearly
12 a year had passed.

13 There will be evidence that I believe it was on
14 November 2nd -- excuse me -- October 2nd, 2014, that
15 Beau was notified of the allegation, and it was a
16 couple of days later when General Counsel confirmed
17 that the 2014-'15 policy would be -- actually, it's
18 called the Code of Student Conduct would apply to
19 adjudicate the substantive portions of the charges.
20 That will be introduced. The 2014-'15 Code of Student
21 Conduct defines what "non-consensual encounter" is, and
22 there's a comment that lists what a non-consensual
23 encounter is.

24 So actually, Beau received notice on November
25 2nd of 2015. November 4th was General Counsel's e-mail

1 confirming how the matter was going to be adjudicated.

2 General Counsel did indicate that the 2015 --
3 and it's called the Sexual and Gender-Based Harassment
4 Sexual Violence Relationship and Interpersonal Violence
5 and Stalking Policy -- for purposes of this matter,
6 I'll be referring to that as the 2015 Title IX
7 Policy -- that that would govern procedural matters.

8 Djuna Perkins interviewed various witnesses and
9 prepared a report. There'll be evidence presented that
10 prior to sharing her report with Beau and the
11 complainant, she provided, Ms. Perkins provided a draft
12 to Amanda Walsh, the Title IX Program Officer. The
13 draft report referenced the relevant policy sections as
14 those contained in the Title IX Policy. When she
15 references it, and it'll be introduced as an exhibit,
16 she references the definition of "consent" in the
17 2015-'16 Title IX Policy. She references the
18 definition of "coercion" in the 2015-'16 Title IX
19 Policy.

20 What happened was -- and you'll hear evidence
21 that Amanda Walsh returned an e-mail to Ms. Perkins and
22 sent a red-line version of the report that Ms. Perkins
23 had prepared and excised references to the 2015 Title
24 IX Policy, specifically with respect to the conduct
25 that was -- the definition of the conduct that was

1 being alleged to have been violated or the section that
2 was alleged to have been violated.

3 So basically, your Honor, you're going to hear
4 about this sort of -- there's really three, three
5 operative documents at play here. There's the 2014-'15
6 Code of Student Conduct. There's a 2015-'16 Title IX
7 Complaint -- Policy, and there's the 2015-'16 actual
8 Title IX Policy.

9 So the Title IX Policy was the one that defined
10 the offenses. The Title IX, actually it's the Title IX
11 Complaint Process defines how matters are adjudicated.

12 So what was conveyed to Beau was that the
13 2014-'15 Code of Student Conduct would apply, the
14 2015-'16 Title IX Complaint Process would also apply.

15 Now, so Ms. Walsh redacted the references to the
16 Title IX Policy, sent the red-line version back to
17 Ms. Perkins, who then prepared an interim report, which
18 was shared with the complainant, Allie; and Beau.

19 The Title IX -- you'll hear evidence that the
20 Title IX adjudication panel convened on April 14, 2016,
21 and the Chair of the adjudicatory panel was
22 Dr. Gretchen Schultz, a professor of French at Brown
23 University. She's referred to as the Title IX Panel
24 Chair. She's a non-voting member and sits on all of
25 the panels.

1 You'll hear evidence that although the panel
2 received a copy of the complaint process, the 2015
3 Title IX Complaint Process and the 2014-'15 Code of
4 Student Conduct, you'll hear that Amanda Walsh put a
5 copy of the 2015-'16 Title IX Policy into Gretchen
6 Schultz's packet.

7 You'll hear that Gretchen Schultz and Amanda
8 Walsh met before the hearing, and there was a
9 conversation where Gretchen Schultz advised -- excuse
10 me -- where Amanda Walsh advised Gretchen Schultz that
11 the panel could consider the definition of "consent" in
12 the 2015-'16 Title IX Policy.

13 Up to that point, Beau was never advised that
14 any definitions in the 2015 Title IX Policy would apply
15 to adjudicate his conduct. In fact, quite to the
16 contrary, he was assured that the 2014-'15 Code of
17 Student Conduct would apply.

18 You'll hear evidence that the Title IX panel
19 reviewed the definitions in the 2015-'16 Title IX
20 Policy and agreed to proceed using the definition of
21 "consent" contained in the 2015-'16 policy. That was
22 on April 14, 2016.

23 That evening, you'll hear evidence that Gretchen
24 Schultz sent an e-mail to Amanda Walsh with a draft of
25 the opinion, of the decision, which references the

1 2014-'15 Code of -- excuse me -- the 2015-'16 Title IX
2 Policy for the definition of "consent."

3 You'll hear evidence that Ms. Walsh received the
4 e-mail but did not open the letter, the attached
5 letter, but in any event the next day sent a letter to
6 Mr. [REDACTED] advising him that at the hearing
7 Mr. [REDACTED] referred to the 2014-'15 Student
8 Conduct -- excuse me. Beau referred to the 2014-'15
9 Code of Student Conduct, and Allie referred to the
10 2015-'16 Title IX Policy. In any event, what happened
11 was the letter said that the panel was directed to look
12 at the 2014-'15 Code of Student Conduct.

13 On the 19th, Beau received a letter indicating
14 that he had been found responsible, and it references
15 the definition -- actually it says in the letter,
16 Because the Code of Student Conduct does not explicitly
17 define "consent" -- that's the 2014-'15 Code of Student
18 Conduct -- the panel referred to the current Sexual and
19 Gender-Based Harassment, Sexual Violence, Relationship
20 and Interpersonal Violence and Stalking Policy, which
21 codified Brown University's existing community
22 standards with respect to maintaining a safe learning,
23 living, and working environment where healthy,
24 respectful, and consensual conduct represents the
25 cultural norms.

1 Mr. [REDACTED] appealed, and there'll be
2 evidence introduced regarding the appeal and references
3 to information that Gretchen Schultz provided to the
4 appeal panel regarding the Title IX Policy
5 incorporating existing -- allegedly incorporating
6 existing cultural norms. There'll be evidence that
7 none of that information was included in the report
8 that Ms. Perkins provided.

9 Our complaint, the issues at trial, our
10 complaint is basically a breach of contract, that the
11 terms of the contract are the Code of Student Conduct.
12 The Code of Student Conduct was not applied. What was
13 applied was a policy that didn't exist when the alleged
14 misconduct occurred, and it was contrary to
15 representations made by General Counsel, as well as
16 information that -- excuse me -- that Beau had received
17 throughout this process.

18 We also have a second count, which is pending,
19 on promissory estoppel, which requires proof by a fair
20 preponderance of the evidence of the clear and
21 unambiguous promise and reasonable justification in
22 detriment to reliance.

23 That's the outline of our case, your Honor.
24 Thank you very much.

25 THE COURT: Thank you very much, Mr. Ratcliffe.

1 Mr. Richard.

2 MR. RICHARD: Thank you, your Honor. Good
3 morning, your Honor, Counsel, Beau.

4 As your Honor has written in another case
5 recently, Brown has Title IX obligations to address and
6 respond to complaints of sexual misconduct involving
7 students. As the Court well knows, there has been
8 considerable national attention on this issue as to how
9 campuses should address complaints of sexual
10 misconduct. What's the process? What is the
11 procedure? And what is the role of the University?
12 This trial will involve a breach of contract claim, not
13 a Title IX claim.

14 I respectfully submit, your Honor, there have
15 been some allegations that have been pled in this case
16 and some questions during discovery that seem to be a
17 disguised Title IX claim. We have allegations of
18 anti-male bias, et cetera, which are factually
19 unsupported, and we'll show that, but I think that
20 they're misplaced in what we're here to address at this
21 trial.

22 Not many cases, if any, have recently gone to
23 trial before the federal courts on this issue of a
24 university's processing of a sexual misconduct
25 complaint. As we've discussed with the Court, I

1 believe I only know of one that went to trial about
2 five years ago, Doe v. University of the South, and I
3 would just like to paraphrase briefly from that case
4 because I think it sets the framework of what we are to
5 do over the next few days.

6 We will hear and receive a lot of information
7 about the interactions between Beau and Allie. There's
8 over 130 pages of texts between the two students,
9 portions of it very sexually graphic. But we're not
10 here to determine which of those two students is
11 telling the truth. We're not here to try to understand
12 and confirm what precisely happened in the room at
13 Faunce House on November 10th, 2014. We're here to
14 address whether Brown breached any contractual
15 obligations to Beau.

16 In this breach of contract claim, the evidence
17 will address certain central questions. What is the
18 contract? How should it be interpreted? Has there
19 been substantial performance by Brown, or did the
20 University breach its obligation?

21 Your Honor, I would submit that the educational
22 contract is a dynamic contract, and we'll show that
23 through the evidence.

24 Mr. Ratcliffe appropriately identified three
25 core documents that will be at the center of this case,

1 one being the '14-'15 Code of Student Conduct; the
2 second being what we call the Title IX Policy; and the
3 third being the Title IX Complaint Process. The latter
4 two documents were enacted and took effect at Brown
5 University in the past academic year, the 2015-'16
6 academic year.

7 The central question in interpreting breach of
8 contract claims concerns Offense III and in the
9 2014-'15 Code of Student Conduct which relates to
10 sexual misconduct. That offense describes sexual
11 misconduct involving non-consensual physical contact of
12 a sexual nature. It's undisputed that the 2014-'15
13 Code did not define "consent." It's not otherwise
14 described in the 2014-'15 Code, but there is a comment
15 to that offense that has been a central point both in
16 discovery and will be a central point during this
17 trial. The comment reads, Offense III encompasses a
18 broad range of behaviors including acts using force,
19 threat, intimidation, or advantage gained by the
20 offended student's mental or physical incapacity or
21 impairment of which the offending student was aware or
22 should have been aware.

23 The evidence before your Honor will be
24 addressing what is the scope of those broad-range
25 behaviors that could constitute a non-consensual sexual

1 act to subject a student to charges by the University
2 under Offense III.

3 And as your Honor has written in other cases,
4 and we acknowledge here, the contract has to be
5 interpreted based upon the reasonable expectations of
6 the student. What is the student's reasonable
7 expectation as the meaning of those broad range of
8 behaviors? We will hear a lot of evidence about what
9 that set of words encompasses, including Beau's rather
10 narrow interpretation of those words.

11 There's a central word that will come up
12 throughout this case and in the evidence, and that's
13 "coercion." Coercion is not specifically mentioned in
14 Offense III of the 2014-'15 Code; but Beau has
15 acknowledged in his deposition that "coercion" is a
16 word that he's heard frequently at Brown. He heard it
17 frequently before November 10, 2014. As part of a
18 pre-enrollment tutorial, he had to answer questions.
19 Over the summer of 2013, all incoming students at Brown
20 had to take the tutorial. It's mandatory for admission
21 and enrollment. That tutorial raises questions about
22 consent and what it means. It informs the student that
23 coercion can invalidate consent.

24 Upon Beau's arrival at Brown University in
25 September of 2013, he and all other freshmen attended

1 mandatory training as part of the orientation weekend.
2 First, there was a 90-minute presentation at the
3 Pizzitola Center where there was a PowerPoint
4 presentation, a video played, a play performance about
5 the issues of sexual relationships and consent. And
6 Beau acknowledges there were instructions about
7 coercion invalidating consent in a relationship.

8 He also went through separate training that
9 evening in a smaller unit. The groups break down, the
10 freshmen break down into residential peer groups, and
11 they have an hour to 90-minute discussion about
12 consent. Beau will say that he also saw around campus
13 a flyer, a poster, "Brown Students Ask For Consent."

14 He also attended mandatory training as part of
15 his fraternity, he recalls, either in the spring of
16 2013 or the beginning of 2014, but certainly before
17 November 10, 2014, where again the instruction
18 addressed coercion invalidating consent.

19 Yet before the hearing panel convened, during
20 the hearing and after the hearing, Beau takes a very
21 limited and narrow view of what "coercion" means and
22 whether it can even fall under the broad ranges of
23 offenses under Offense Number III in the '13-'14 Code.

24 Let's be clear, your Honor, that Brown
25 acknowledged and does not dispute here that the

1 2014-'15 Code of Conduct controlled as to the substance
2 of the charges against Beau.

3 The act in question occurred on November 10,
4 2014, the fall semester of 2014. The report of Allie
5 did not come to the University until nearly a year
6 later, on October 30, 2014 (sic). In the interim,
7 there were some dynamic changes at Brown University as
8 to its Title IX policies.

9 THE COURT: I think you meant '15.

10 MR. RICHARD: I'm sorry, your Honor. Did I say
11 '14?

12 THE COURT: October 30th, 2015.

13 MR. RICHARD: '15. My mistake. Thank you for
14 correcting me, your Honor.

15 In the interim, there were dynamic changes at
16 Brown University as to its Title IX policies and
17 procedures.

18 The University convened a Sexual Assault Task
19 Force, which took a comprehensive look at Title IX
20 policies, protocols, procedures, and concerns on campus
21 and, of course, the University. The task force issued
22 an interim report in December 2014 and a final report
23 in April 2015. All of this led to the creation of the
24 Title IX Office at Brown and the hiring of the Title IX
25 Program Coordinator, Amanda Walsh, who will be our

1 first witness.

2 As part of this process, for the 2015-'16 year
3 Brown enacted a new Title IX Policy, which is the
4 substantive document, and includes definitions of
5 "consent" and "coercion" as well as detailed
6 descriptions of offenses, and it also enacted a new
7 complaint process; sort of Brown's rules of procedure
8 as to how it would process complaints consistent with
9 its Title IX obligations.

10 So again, your Honor, there's no dispute that
11 Beau was charged with violations of the 2014-'15 Code,
12 which govern the substance of the offense, for which he
13 may or may not be found responsible for. But it's
14 important to note that the 2015-'16 Complaint Process
15 controlled. That was told to him. At times during
16 discovery Beau was going back and forth between the
17 current complaint process and the prior procedures.
18 The procedures here are those delineated in the
19 complaint process.

20 At the hearing on April 14, 2016, the Title IX
21 Council convened. There is a Chair who is a non-voting
22 member, Gretchen Schultz, and three panelists who vote
23 to decide the case. It's undisputed that they did
24 reference the 2015-'16 definition of "coercion" and
25 "consent" by the panelists' choice as a guide to

1 interpret those broad range of behaviors subject to
2 Offense III in the '14-'15 Code.

3 The question before your Honor and the evidence
4 you will hear will address whether or not that was
5 consistent with Brown's community expectations and
6 contract with this student or inconsistent. And that
7 will ultimately be the question for your Honor to
8 decide.

9 But I do just want to briefly address the other
10 breach of contract claims that the Plaintiff has
11 raised, because it goes beyond this central issue of
12 those broad range of offenses and how they're
13 interpreted. He's challenged the investigative
14 process.

15 As Mr. Ratcliffe indicated, Brown hired an
16 investigator, Djuna Perkins, who is a very experienced
17 investigator in issues of campus assaults or sexual
18 misconduct. She's done over 40 of them for campuses
19 nationwide as a former prosecutor.

20 This is a big change from the way Brown did
21 things in the past. Brown previously had case
22 administrators through the Office of Student Life.
23 There would be a process that would ultimately result
24 in a hearing in which students would testify, a Student
25 Conduct Board hearing.

1 This new investigative model, as delineated in
2 the complaint procedures, entrusts the investigator to
3 conduct a comprehensive investigation, and the
4 complaint process empowers her to do so but also gives
5 her discretion to make choices as to what is or is not
6 relevant evidence.

7 Ms. Perkins wrote a 29-page single-spaced
8 report. She interviewed Allie three times, Beau twice.
9 She interviewed 11 witnesses. She was hired in
10 November 2015, finalized her report in March 2016, over
11 a five-month span.

12 As your Honor knows, the Office of Civil Rights
13 and the Department of Education targets 60 days as the
14 time that these investigations should proceed to a
15 hearing. The thoroughness of this investigation speaks
16 for itself.

17 Mr. [REDACTED] challenges one decision --
18 excuse me. Beau challenges one decision made by the
19 investigator to exclude or not seek certain text
20 messages between Allie and Witness Number 9. Djuna
21 Perkins will explain why she did so. But the
22 investigator has the discretion to make those choices
23 under the complaint process.

24 Also, your Honor, briefly, the Plaintiff
25 challenges the composition and training of the Title IX

1 Council. The Title IX Council is a newly-enacted
2 council that came into place at Brown as part of these
3 new complaint procedures. He claims that the training
4 of the Title IX Council was not balanced and
5 particularly focuses on the training session offered by
6 a woman named Alana Sacks. She's called a SHARE
7 advocate at Brown, and she presented on the impacts of
8 trauma upon victims and complainants.

9 The Plaintiff challenges why that training was
10 offered. Well, the answer is simple. It's mandated by
11 federal law, as Ms. Walsh will say in her testimony.

12 But also this was just one part of a
13 comprehensive training program. All Title IX Council
14 members had to undergo at least five hours of training
15 before they could sit on a case. That included a
16 two-hour session by Ms. Walsh on Title IX and the
17 University's processes and procedures, a presentation
18 by the Men's Health Council as to issues relating to
19 masculinity, the SHARE advocate's presentations,
20 Flaherty Act presentations, campus security
21 presentations. There was a broad spectrum of training
22 that each panelist received. It wasn't as narrow and
23 biased as the Plaintiff claims.

24 Also, your Honor, the Plaintiff alleges that one
25 of the panelists who presided at the disciplinary

1 hearing on April 14, Dean Besenia Rodriguez, wrongly
2 excluded evidence, because she was somehow influenced
3 by the SHARE advocate's training that post-event
4 interactions between Allie and Beau are just totally
5 irrelevant. Dean Rodriguez will say that she weighed
6 the evidence, but she gave more weight to other
7 evidence. That's her prerogative as a panelist, just
8 as it would be a juror's prerogative in this court as a
9 decision-maker.

10 Lastly, your Honor, the Plaintiff challenges the
11 appellate process at Brown. First, he claims that he
12 should have been able to proceed with an appeal based
13 on the weight of the evidence.

14 The complaint process does not allow that type
15 of appeal. The Plaintiff does not get to rewrite his
16 contract as part of the process for this litigation.

17 The appellate stage under the complaint process
18 focuses on two grounds: Procedural error that
19 materially affected the outcome, or material evidence
20 not reasonably available at the time of the hearing.

21 Beau did raise procedural error. He challenged
22 whether or not the panel should have referenced the
23 '15-'16 definition of "coercion" and ultimately cites
24 to it in its decision.

25 That part was properly before the appellate

1 panel. His claims that he should have been allowed to
2 challenge what he thought was a ridiculous decision was
3 properly not considered.

4 He also raises one minor procedural point
5 regarding the appellate process, your Honor. He claims
6 that he should have been allowed to file a surreply.

7 What happened here was after the panel ruled,
8 both Beau and Allie filed appeals, as they are allowed
9 to do so under Title IX. We had cross-appeals by both
10 students. The complaint process allows the appellee to
11 respond to the appellant's appeal. But there is no
12 surreply mentioned in the complaint process.

13 Beau claims that he essentially should have had
14 the last word. Ms. Walsh will testify the reason why
15 the complaint process is this way, which she
16 essentially wrote, is to ensure a level playing field
17 under Title IX. Each student has a chance to speak.
18 But if Beau has a chance for surreply, does Allie get a
19 chance to reply to that? The complaint process
20 delineates the filing and the process, and Beau tries
21 to rewrite it.

22 Lastly, your Honor, you'll be dealing with the
23 issues of remedy. We've addressed that at length in
24 our pretrial memo, so I won't elaborate here. I will
25 just emphasize the point that Beau has not produced in

1 discovery a single document of fact that suggests that
2 he has a dollar in damages in this case. We have no
3 evidence of any counseling. He says he's had none. No
4 medical treatment as a result of stress. He says he
5 has none. This case is not about damages. It's a
6 purely injunctive relief case.

7 Your Honor, as the Title IX Program Officer,
8 investigator, hearing and appellate panels will
9 testify, this matter presented vexing issues about
10 consent and whether and when, to what extent it existed
11 between Beau and Allie.

12 Both decisions in this case, the hearing panel
13 and the appellate decision on Beau's appeal, were
14 two-to-one votes. We have a substantial investigation
15 that spanned six months that followed the complaint
16 procedures.

17 Your Honor, Beau obviously disagrees with the
18 result and the sanction, and I certainly respect his
19 opinion and subjective right to do so, but there was no
20 breach of Brown's contractual relationship with Beau.

21 Thank you.

22 THE COURT: Thank you, Mr. Richard.

23 Before we call the first witness, just a couple
24 of matters that I want to put on the record and have
25 counsel just state your agreement to.

1 The first one is that, and I should have
2 mentioned this earlier, that counsel have by consent
3 agreed to consolidate the preliminary injunction
4 hearing with the trial on the merits and have agreed to
5 try this matter to the Court, without a jury, in order
6 to get an expeditious ruling. If I could just get
7 counsel to acknowledge that on the record, that that is
8 what you have agreed to and have asked for.

9 MR. RATCLIFFE: That is correct, your Honor.

10 MR. RICHARD: Yes, your Honor.

11 THE COURT: All right. Very good. And the
12 second preliminary matter is have you discussed -- do
13 you have a view of whether you want witnesses in the
14 matter sequestered?

15 MR. RATCLIFFE: Yes, we have discussed that.
16 We've agreed to sequester witnesses, obviously except
17 for my client.

18 THE COURT: Okay. You agree with that?

19 MR. RICHARD: Yes, your Honor.

20 THE COURT: All right. Very well.

21 Thank you for your opening statements and your
22 more detailed, excellent pretrial memos.

23 Mr. Ratcliffe, are you ready to call your first
24 witness?

25 MR. RATCLIFFE: Yes, your Honor.

1 Amanda Walsh.

2 **AMANDA WALSH, PLAINTIFF'S WITNESS, SWORN**

3 THE CLERK: Please state your name and spell
4 your last name for the record.

5 THE WITNESS: Amanda Walsh, W-A-L-S-H.

6 THE COURT: Good morning, Ms. Walsh.

7 You may inquire, Mr. Ratcliffe.

8 **DIRECT EXAMINATION BY MR. RATCLIFFE**

9 Q. Good morning.

10 A. Good morning.

11 Q. Where are you currently employed?

12 A. Brown University.

13 Q. In what capacity?

14 A. I'm the Title IX Program Officer.

15 Q. And you are also an attorney?

16 A. Yes.

17 Q. And you graduated from Roger Williams Law School
18 in 2011?

19 A. Yes.

20 Q. When did you become employed by Brown University?

21 A. The early part of May. My first day, I believe,
22 was May 4th, 2015.

23 Q. So you're the Title IX Program Officer?

24 A. Yes.

25 Q. And that was a new position at Brown University?

1 A. Yes.

2 Q. And as a Title IX Program Officer, what are your
3 responsibilities and duties?

4 A. To oversee effectively the Title IX Policy and the
5 accompanying complaint procedures related to all
6 incidents that fall under the policy, so that would
7 include sexual and gender-based harassment, sexual
8 assault, stalking, interpersonal violence --

9 THE COURT: Slow it down a little.

10 THE WITNESS: Sure, sure.

11 A. So that would include sexual and gender-based
12 harassment, sexual assault, stalking, interpersonal
13 violence. And again, that experienced by students,
14 faculty, or staff.

15 Q. So you oversee the whole Title IX process?

16 A. Yes.

17 Q. And the Title IX process, is that the Title IX
18 Complaint Process? That's basically what you oversee;
19 correct?

20 A. The complaint process that you're referencing is
21 the complaint process for complaints against student
22 respondents.

23 MR. RATCLIFFE: We've premarked some exhibits,
24 your Honor. This would be Exhibit 3.

25 MR. RICHARD: Your Honor, I would stipulate to

1 the admissibility of this document.

2 THE COURT: Very well. Three will be full.

3 (Plaintiff's Exhibit 3 admitted in full.)

4 MR. RATCLIFFE: May I approach.

5 THE COURT: Yes.

6 Q. And showing what's been marked as Exhibit 3,
7 that's referred to as the Title IX Complaint Process?

8 A. Yes.

9 Q. And basically what's covered under the complaint
10 process?

11 A. I'm sorry?

12 Q. What does the complaint process address?

13 A. All issues that would fall under the Sexual and
14 Gender-Based Harassment, Sexual Assault, Stalking,
15 Interpersonal Violence.

16 Q. Does it provide substantive definitions of what
17 those offenses constitute?

18 A. In the complaint process?

19 Q. Yes.

20 A. No.

21 Q. And was it your understanding that the Title IX
22 Complaint Process was applied to Beau's, to the matter
23 at hand -- to Beau's -- to the complaint that was filed
24 against Beau?

25 A. Yes.

1 Q. Now, also your duties -- there is another document
2 you referred to; correct?

3 A. Yes.

4 Q. The policy?

5 A. Yes.

6 MR. RICHARD: Your Honor, likewise I stipulate
7 to the admissibility of this document.

8 THE COURT: Is this 4?

9 MR. RATCLIFFE: Yes.

10 MR. RICHARD: Yes.

11 THE COURT: All right. Four will be full.

12 (Plaintiff's Exhibit 4 admitted in full.)

13 Q. So showing you Exhibit 4 full, the Title IX
14 complaint -- excuse me -- the Title IX Policy, it's
15 actually referred to the Sexual and Gender-Based
16 Harassment, Sexual Violence Relationship, Interpersonal
17 Violence and Stalking Policy; correct?

18 A. Yes.

19 Q. For purposes of brevity, we've been referring to
20 it as the "Title IX Policy."

21 A. Okay.

22 Q. Is that fine with you?

23 A. Yes, that's fine.

24 Q. What's the distinction between the Title IX Policy
25 and the Title IX Complaint Process?

1 A. The Title IX Policy delineates the conduct as it's
2 defined at Brown. It also applies University-wide, so
3 to our entire community. There are three sets of
4 accompanying complaint procedures. The one you
5 referenced applies to student respondents, and it is
6 how the case will proceed, how it will be investigated
7 and adjudicated.

8 Q. Prior to coming to Brown University, were you
9 employed?

10 A. Yes.

11 Q. And where were you employed?

12 A. I was a staff attorney at a law center up in
13 Boston, a non-profit called the Victim Rights Law
14 Center.

15 Q. Called the Victims Rights Law Center?

16 A. Yes.

17 Q. And you had experience at the Victims Rights Law
18 Center being involved in student disciplinary
19 proceedings?

20 A. Yes.

21 Q. And that was what type of disciplinary
22 proceedings?

23 A. The Law Center represented victims of rape and
24 sexual assault, so that the victim could have been a
25 complainant or a respondent, depending on the

1 disciplinary proceeding.

2 So it was all forms of disciplinary proceedings,
3 but oftentimes a complainant would bring before it an
4 allegation of sexual assault at a university.

5 Q. So you were involved in university disciplinary
6 proceedings involving allegations of sexual misconduct?

7 A. Yes.

8 Q. How long did you do that?

9 A. I started at the Victim Rights Law Center in the
10 fall or the late summer of 2011.

11 Q. And you worked there until being hired by Brown?

12 A. Yes. Through April 2015.

13 Q. Now, do you recall when Allie filed a complaint in
14 this matter?

15 A. I believe it was October 30th, 2015.

16 MR. RATCLIFFE: Exhibit 5, your Honor.

17 THE COURT: Is this also stipulated to?

18 MR. RICHARD: Yes, your Honor. This may be
19 admitted.

20 THE COURT: All right. Five will be full.

21 (Plaintiff's Exhibit 5 admitted in full.)

22 Q. Showing you what's been marked as Exhibit Number 5
23 and ask you if you recognize that document.

24 A. Yes. It's Allie's complaint.

25 Q. And you said that complaint was filed on

1 October 30th, 2015?

2 A. Yes.

3 Q. And the conduct, the event that allegedly
4 occurred, what date did that occur on?

5 A. I believe it was November 10th, 2014.

6 Q. Now, when a complaint is filed, what is your
7 responsibility as the Title IX Program Officer?

8 A. It initiates the complaint process as delineated
9 in the complaint process document, so I follow the
10 steps as outlined. The first one is to provide notice
11 to the respondent.

12 Q. When you say "the complaint process," you're
13 referring to Exhibit Number 3; correct? I can show you
14 again.

15 A. Yes.

16 Q. So you have -- your first obligation is to provide
17 notice to the respondent?

18 A. Yes.

19 Q. And in this case that was Beau?

20 A. Yes.

21 Q. Do you recall when you provided Beau notice?

22 A. The complaint I believe came in on a Friday night,
23 and I believe I contacted him via e-mail on Sunday,
24 November 1st, to meet with me the following Monday, the
25 first day back to -- the first business day. And that

1 meeting happened late in the day on Monday,
2 November 2nd, 2015.

3 Q. And at the meeting that you had with Beau on
4 November 2nd, he was really anxious and wanted to give
5 his side of the story; correct?

6 A. Yes.

7 Q. And what did you tell him?

8 A. That I try to discourage students, both
9 complainants and respondents, from giving me a lot of
10 factual information about what happened at those
11 meetings just because I'm not the investigator, and I
12 want to be clear about the roles; that I will be
13 meeting with both the complainant and the respondent as
14 necessary, but that I will not be the investigator.

15 So I wanted to reassure him that he would be
16 able to tell his side of the story, but it wouldn't be
17 to me, that my role would be to oversee the process,
18 provide him with information as necessary, et cetera.

19 Q. And overseeing the process, making sure that the
20 complaint process was filed with -- was followed?

21 A. Yes.

22 Q. Anything else?

23 A. Anything else from that meeting?

24 Q. No. Anything else other than making sure that the
25 complaint process is followed?

1 A. I also am a point of contact that students can use
2 to offer them any sort of remedial measures that they
3 might need.

4 So, for example, students are assigned academic
5 support deans that they can utilize, understanding that
6 this is going to, you know, have a detrimental impact
7 potentially on their academics throughout the semester;
8 and also to make sure that they are in communication,
9 if they would like to be, with a student support dean
10 in the Office of Student Life, which at that point I
11 knew that Beau was because he had met with a dean
12 already, and I was aware of that. And then just to
13 make sure people are aware of different resources on
14 campus, including perhaps counseling and psych
15 services, things like that.

16 So my role is really both to oversee the
17 complaint process, but I would include making sure that
18 students had access to, sort of, remedial measures as
19 part of that.

20 MR. RATCLIFFE: Exhibit Number 6.

21 MR. RICHARD: Stipulated as full, your Honor.

22 THE COURT: All right. Thank you. Six will be
23 full.

24 (Plaintiff's Exhibit 6 admitted in full.)

25 Q. I'm showing you what's been previously marked as

1 Exhibit Number 6. Do you recognize that document?

2 A. Yes. It's a letter that I sent to Beau as a
3 follow-up to the meeting on November 2nd.

4 Q. So at the meeting -- in your letter you indicate
5 that you provided Beau with a copy of the complaint.
6 In your letter you indicated you provided Beau with a
7 copy of the complaint?

8 A. Yes. I generally provide them with a redacted
9 copy that they can keep, and then I also show them an
10 unredacted copy that they can review in my office.

11 Q. And you provided Beau with a copy of the complaint
12 process?

13 A. Yes.

14 Q. The complaint process, being Exhibit 3?

15 A. Yes.

16 Q. Now, you said, As outlined in the process, you
17 have five business days to submit a written statement,
18 but are not required to do so. And you indicate,
19 Because you met at the close of business hours on
20 Monday, I ask that you submit your statement by
21 5:00 p.m. on Monday, November 9th.

22 Is that correct?

23 A. That's correct.

24 Q. What does the complaint process provide regarding
25 the submission of a written statement? What is that?

1 What's the purpose of the written statement?

2 A. It provides a written opportunity for a student to
3 respond to the allegations contained within the
4 complaint.

5 Q. And Beau was also advised he could have an advisor
6 at this point?

7 A. Yes.

8 Q. At that meeting, did you have any discussion
9 regarding the substantive -- which Code would apply,
10 whether it was the Code that was in existence when the
11 alleged misconduct occurred, or the Title IX Policy?

12 A. I can't recall specifically.

13 Q. In any event --

14 MR. RATCLIFFE: Exhibit 7.

15 Q. Let me ask you this first. At some point, did you
16 become aware that Mr. [REDACTED] was notified through
17 counsel that Brown would be using the new complaint
18 process to resolve the complaint, but also since the
19 alleged incident took place last year, the provisions
20 of last year's Code of Student Conduct would apply?

21 A. Yes.

22 Q. Did you ever see a copy of an e-mail that was sent
23 from a member of the Office of General Counsel to
24 Beau's attorney?

25 A. I can't recall specifically.

1 Q. But in any event, you learned that that was what
2 had been agreed?

3 A. I recall that a member of the Office of General
4 Counsel had indicated that the question had been asked
5 by Beau's advisor and was confirming a discussion that
6 we had had previously, which was moving forward all
7 cases submitted the 2015-'16 academic year would be
8 controlled by the Complaint Process, but the conduct by
9 the existing Code at the time that the conduct or the
10 incident occurred.

11 Q. When you say "the existing Code," that would be
12 the 2014-'15 Code of Student Conduct?

13 A. In this case, yes.

14 Q. And you weren't at Brown University when -- strike
15 that.

16 You weren't the Title IX Program Officer when
17 matters were being adjudicated under the Code of
18 Student Conduct, were you?

19 A. Only for the month of May 2015, when I arrived at
20 Brown.

21 Q. And did you have responsibility for overseeing
22 those cases?

23 A. No. I acted more as a support person and
24 really -- I watched the cases and understood how the
25 process was working at the time.

1 Q. And I believe that at that point in the spring of
2 2015, although Brown was adjudicating the cases under
3 the 2014-'15 Code of Student Conduct, they had moved to
4 an investigator model in May of 2015?

5 A. My understanding is that following the interim
6 report of the Sexual Assault Task Force, there were
7 some recommendations made that were implemented in the
8 interim. So I think, before the start of the spring
9 2015 semester, one of those was to utilize an
10 investigator, but the students were still given access
11 to the rights afforded to them under the Code, was my
12 understanding. So there was still a hearing.

13 Q. In any event, when you got there, you said you
14 oversaw -- you were present when a couple of hearings
15 occurred; correct?

16 A. Yes.

17 Q. And those were hearings that were done under the
18 old -- with an investigator?

19 A. They were cases that were adjudicated under the
20 old hearing process but that also utilized an
21 investigator.

22 Q. In any event, at some point you familiarized
23 yourself with the 2014-'15 Code of Student Conduct?

24 A. Yes.

25 Q. Particularly with respect to Offense III?

1 A. Yes.

2 MR. RATCLIFFE: I would ask that Exhibit 2 be
3 marked as full.

4 MR. RICHARD: No objection, your Honor.

5 THE COURT: Exhibit 2? I thought that had
6 already been done, but if not, it is full.

7 (Plaintiff's Exhibit 2 admitted in full.)

8 Q. Now, showing you what's been previously marked as
9 Exhibit 2, that is an excerpt from the 2014-'15 Code of
10 Student Conduct; correct?

11 A. Yes.

12 Q. And that Offense III is the sexual misconduct
13 offense; correct?

14 A. Yes.

15 Q. And III(a) is sexual misconduct that involves
16 non-consensual physical contact of a sexual nature;
17 correct?

18 A. Yes.

19 Q. And III(b) is sexual misconduct that includes one
20 or more of the following: Penetration, violent
21 physical force, or injury?

22 A. Yes.

23 Q. Now, there is a comment, is there not?

24 A. Yes.

25 Q. And perhaps you can read the comment.

1 **A.** (Reading:) Offense III encompasses a broad range
2 of behaviors including acts using force, threat,
3 intimidation, or advantage gained by the offended
4 student's mental or physical incapacity or impairment,
5 of which the offending student was aware or should have
6 been aware. Harassment without physical contact will
7 not be deemed sexual misconduct under these provisions.
8 Violations of Offense III(b) will result in more severe
9 sanctions from the University, separation being the
10 standard. Note: Some forms of sexual misconduct may
11 also constitute sexual assault under Rhode Island
12 criminal laws and are subject to prosecution by state
13 law enforcement authorities which can take place
14 independent of charges under the University Student
15 Code of Student Conduct.

16 **Q.** So under the comments on Offense III, it's
17 basically the student would be directed to four
18 different types of behaviors, range of behaviors are
19 four; correct?

20 **A.** There are four listed, yes.

21 **Q.** That would be force?

22 **A.** Yes.

23 **Q.** Threat?

24 **A.** Yes.

25 **Q.** Intimidation?

1 A. Yes.

2 Q. Or advantage gained by the offended student's
3 mental or physical incapacity or impairment --

4 A. Yes.

5 Q. -- of which the offending student was aware or
6 should have been aware?

7 A. Yes.

8 Q. In this case there was no indication of any
9 alcohol or drugs?

10 A. No, there was not.

11 Q. Now, at some point Beau provided a response to
12 Allie's complaint; correct?

13 A. Yes.

14 Q. And that came to you?

15 A. Yes.

16 Q. And at the time that you received the response,
17 you were in the process of retaining an investigator?

18 A. Yes.

19 Q. Now, I know that when you received Allie's
20 complaint there were text messages attached; correct?

21 A. Correct.

22 Q. And the text messages ended at the -- strike that.
23 There were no text messages provided by Allie
24 after the -- related to communications after the
25 alleged event; correct?

1 A. I don't remember specifically. I do remember that
2 she had -- hers excluded some text messages. I don't
3 remember exactly what they excluded.

4 Q. In any event, you recall that Beau provided the
5 entire universe of text messages?

6 A. I recall that he, when he submitted his response
7 statement, he had also indicated that he had provided a
8 full set of text messages, and both were provided to
9 the investigator ultimately.

10 Q. And that Beau was representing that his text
11 messages included communications that occurred after
12 the encounter on November 10, 2014?

13 A. Again, I don't recall exactly what he said his
14 included, but I know he said something to the effect
15 of, I'm providing a full set; she provided an abridged
16 version, or something like that.

17 Q. As a Title IX Program Officer, did you ever check
18 to see or compare to see whether or not Allie had, in
19 fact, not provided a full set of text messages?

20 A. I recall doing so at the time, but that's also,
21 too, a function of the investigator. So I made sure
22 that she knew that Beau had indicated it wasn't a full
23 set, so she could consider it and weight that
24 information.

25 Q. So you said you had looked at it at the time that

1 Beau submitted them?

2 A. Yes.

3 Q. And you looked at -- you compared Allie's text
4 messages and Beau's text messages?

5 A. Yes. At the time, yes.

6 Q. And at the time you concluded that Allie did not
7 provide a full set?

8 A. Yeah, I recall that Allie's were missing some. I
9 just don't recall the exact dates hers were missing
10 right now.

11 Q. You don't recall whether or not Allie's were
12 missing communications that occurred after the alleged
13 event?

14 A. I'm not sure exactly what hers were missing, no.

15 MR. RATCLIFFE: Exhibit 8.

16 MR. RICHARD: This may be full, your Honor.

17 THE COURT: Thank you. Exhibit 8 may be full,
18 without objection.

19 (Plaintiff's Exhibit 8 admitted in full.)

20 Q. Now I'm showing you what was previously marked as
21 Exhibit 8 and ask you if you recognize that.

22 A. Yes. It is the response statement from Beau.

23 Q. And you read that?

24 A. Yes.

25 Q. And do you recall the gist of what Beau was

1 alleging?

2 A. Well, in many respects that they had a flirting
3 relationship and that this was consensual, this being
4 the event on November 10th.

5 Q. And you also recall that Beau addressed the delay
6 in reporting the event and her continued pursuit of him
7 after the event?

8 A. Yes.

9 Q. And he provided text messages to corroborate that,
10 did he not?

11 A. Yes.

12 Q. Just getting back to Exhibit 2, there was -- in
13 the Code of Student Conduct, I had asked you to address
14 the comment regarding the Offense III sexual
15 misconduct, which Beau was ultimately charged with.
16 Are you aware that there's a comment, there's a note
17 that deals with comments?

18 A. Yes.

19 Q. And that note provides, The comments contained
20 herein are offered as a guide to understanding the
21 University's policy and are not to be confused with the
22 policies themselves.

23 A. Yes.

24 Q. So it was your understanding that that comment
25 to -- that comment to sexual misconduct would guide the

1 student to understanding the types of behaviors that
2 were prohibited under the 2014-'15 Code of Student
3 Conduct?

4 A. My understanding is, yes, that that comment that I
5 read would guide a student to help understand
6 Section III(a) and III(b).

7 Q. Now, you retained an investigator to investigate
8 Allie's complaint?

9 A. Yes.

10 Q. And that was Djuna Perkins?

11 A. Yes.

12 Q. And you, on behalf of Brown University, executed a
13 retainer agreement with Ms. Perkins?

14 A. Yes.

15 MR. RATCLIFFE: Exhibit 9.

16 MR. RICHARD: Full exhibit, your Honor.

17 THE COURT: All right. Nine will be full.

18 (Plaintiff's Exhibit 9 admitted in full.)

19 Q. Now, I'm showing you -- do you recall when that
20 retainer agreement was executed?

21 A. In my mind I think it's around November 6th,
22 approximately.

23 Q. There's an e-mail here that says, Subject:
24 Engagement letter, from Djuna Perkins to you. And
25 what's the date of that e-mail?

1 A. November 6th, 2015.

2 Q. Okay. And Djuna was returning to you the executed
3 engagement letter?

4 A. Yes.

5 Q. And she said that, As you can see from the date of
6 my signature, I scanned it right away but then forgot
7 to actually send it to you.

8 A. Yes.

9 Q. And the date of her signature was 11/4/2015;
10 correct?

11 A. Yes.

12 Q. But as of November 6th, 2015, you had engaged her
13 to investigate the complaint?

14 A. Yes.

15 THE COURT: Mr. Ratcliffe, before you get too
16 far into the substance of this line of inquiry, this
17 probably would be a good time for us to take a break.

18 And my understanding is that in order to
19 accommodate Ms. Walsh, we're going to take a
20 one-half-hour break, unless we can reconvene earlier
21 than that.

22 So the plan will be to reconvene just before
23 11 o'clock. All right?

24 MR. RATCLIFFE: Thank you.

25 THE COURT: Okay. We'll be in recess.

1 (Recess.)

2 THE COURT: All right. Mr. Ratcliffe, you may
3 continue.

4 MR. RATCLIFFE: Thank you, your Honor.

5 Q. Hello. When we left off, I believe we were
6 discussing that you, as the Title IX Program Officer,
7 had retained Djuna Perkins as an investigator.

8 A. Yes.

9 Q. And the Title IX Complaint Process addresses the
10 role of the investigator, does it not?

11 A. Yes.

12 Q. And primarily the role of the investigator is to
13 find facts; correct?

14 A. To find facts and synthesize those into a report
15 that also includes facts and credibility assessments.

16 Q. Okay. And, in fact, that's addressed in the
17 complaint process?

18 A. Yes.

19 MR. RATCLIFFE: Your Honor, I've spoken to
20 Mr. Richard. We were copying a lot of these documents
21 yesterday and one of them that got copied had some
22 underlining on it, some highlighting. I'm going to
23 substitute that later. But he has no objection to me
24 publishing it to the witness with some highlighting on
25 it and substituting later.

1 MR. RICHARD: That's no problem, your Honor.

2 THE COURT: Okay. Thank you. That's fine.

3 Q. Now I'm showing you the Title IX Policy,
4 Exhibit 3, which has been introduced. That's a full
5 exhibit. That addresses the role of the investigator;
6 correct?

7 A. Yes.

8 Q. And basically, as you said, the role of the
9 investigator will be to gather additional information
10 through interviews of the complainant, respondent and
11 witnesses, and synthesize the information into a report
12 that will be provided to the Title IX Council?

13 A. Yes.

14 Q. Basically the report, the policy, the complaint
15 process, the purpose of the investigator gathering the
16 report is so that the Title IX panel would have all the
17 facts that they would need to make their decision;
18 correct?

19 A. Correct.

20 Q. Now, in this case you received a draft of
21 Ms. Perkins' report; correct?

22 A. Correct.

23 Q. And you received that on or about February 29,
24 2015?

25 A. Yes.

1 MR. RATCLIFFE: Exhibit 10.

2 MR. RICHARD: It may come in as full, your
3 Honor.

4 THE COURT: All right. Thank you. Ten will be
5 full.

6 (Plaintiff's Exhibit 10 admitted in full.)

7 Q. I'm showing you what's been marked as Exhibit 10
8 in full and ask you if you recognize that document.

9 A. Yes. It is the draft report that Djuna Perkins
10 sent to me via e-mail.

11 Q. And in the draft report, Djuna Perkins references
12 relevant policy sections that applied to the complaint;
13 correct?

14 A. She includes relevant policy sections that --

15 Q. Well, it says relevant policy sections.

16 A. Right. Yeah.

17 Q. And those relevant policies that she includes in
18 her draft report are what?

19 A. Are two different -- both the Title IX Policy and
20 the 2014-2015 Code of Student Conduct.

21 Q. Now, the relevant policy section, the first one
22 actually refers to the Brown University Sexual and
23 Gender-Based Harassment, Sexual Violence, Relationship
24 and Interpersonal Violence and Stalking Policy?

25 A. Correct.

1 Q. And that's been previously introduced as
2 Exhibit 4; correct? Showing you Exhibit 4.

3 A. Yes, that's the policy she's referencing.

4 Q. And that, just for the -- that's the policy that
5 was adopted in September of 2015?

6 A. Yes.

7 Q. And that's the policy, to your knowledge, that
8 Mr. [REDACTED] -- strike that.

9 To your knowledge, Mr. [REDACTED] was never
10 told that the 2014-'15 -- excuse me -- the 2015-'16
11 Title IX Policy would apply to his case; correct?

12 A. Correct.

13 Q. Now, with respect to -- she references -- and then
14 she references specific offenses -- two specific
15 defenses; correct?

16 A. Correct.

17 Q. And those two specific defenses are offenses under
18 the Title IX Policy; correct?

19 A. Correct.

20 Q. And that's VII(a) and VII(b)?

21 A. Correct.

22 Q. And I'm showing you what's previously marked as
23 Exhibit 4, I believe.

24 VII(a) is what offense?

25 A. VII(a) is sexual or gender-based harassment.

1 Q. And VII(b) is?

2 A. VII(b) is sexual assault.

3 Q. And the definition of sexual assault is?

4 A. (Reading:) Sexual assault, as defined in the
5 '15-'16 Title IX Policy: Sexual assault is having --

6 THE COURT: Slow down. Slow down.

7 Go ahead.

8 A. (Reading:) Sexual assault is having or intending
9 to have sexual contact with another individual without
10 consent.

11 And then it goes on, it references, (Reading:)
12 See below for the definition of "consent."

13 And then it goes on to say, (Reading:) Sexual
14 contact includes, one, sexual intercourse, in
15 parentheses, anal, oral or vaginal, including
16 penetration with a body part, for example, penis,
17 finger, hand, or tongue, or an object or requiring
18 another to penetrate himself or herself with a body
19 part or an object, however slight; or, Section II,
20 sexual touching, including, but not limited to,
21 intentional contact with the breast, buttocks, groin,
22 genitals, or other intimate part of an individual's
23 body.

24 Q. Now, moving to the definition -- in the Title IX
25 Policy Djuna Perkins also referenced VIII(a), the

1 definition of "consent."

2 A. Yes.

3 Q. And would you read that.

4 A. (Reading:) Consent is an affirmative and willing
5 agreement to engage in specific forms of sexual contact
6 with another person. Consent requires an outward
7 demonstration through mutually-understandable words or
8 actions, indicating that an individual has freely
9 chosen to engage in sexual contact. Consent cannot be
10 obtained through --

11 THE WITNESS: I can't see that.

12 MR. RATCLIFFE: Now you can.

13 THE WITNESS: Thanks. Okay. I can see that.

14 MR. RATCLIFFE: You can see that now?

15 A. -- through, one, manipulation; or, two, the use of
16 coercion or force; or, three, by taking advantage of
17 the incapacitation of another individual. Silence,
18 passivity, or the absence of resistance does not imply
19 consent.

20 It is important not to make assumptions. If
21 confusion or ambiguity arises during a sexual
22 interaction, it is essential that each participant
23 stops and clarifies the other's willingness to
24 continue. Consent can be withdrawn at any time. When
25 consent is withdrawn, sexual activity must cease.

1 Prior consent does not imply current or future
2 consent. Even in the context of an ongoing
3 relationship, consent must be sought and freely given
4 for each instance of sexual contact.

5 An essential element of the consent is that it
6 be freely given. Freely-given consent might not be
7 present or may not even be possible in relationships of
8 a sexual or intimate nature between individuals where
9 one individual has power, supervision, or authority
10 over another.

11 More information, policy, and guidance regarding
12 such relationships can be found below.

13 In evaluating whether consent was given,
14 consideration will be given to the totality of the
15 facts and circumstances, including, but not limited to,
16 the extent to which a complainant affirmatively uses
17 words or actions indicating a willingness to engage in
18 sexual contact, free from manipulation, intimidation,
19 fear, or coercion; whether a reasonable person in the
20 respondent's position would have understood such
21 person's words and acts as an expression of consent;
22 and whether there are any circumstances known or
23 reasonably apparent to the respondent demonstrating
24 incapacitation or fear.

25 **Q.** Then Ms. Perkins also referenced Section VII(b),

1 "Coercion;" correct?

2 A. Correct.

3 Q. The definition that she referenced for "coercion,"
4 could you read that, please.

5 A. Sure. (Reading:) Coercion is verbal and/or
6 physical conduct, including manipulation, intimidation,
7 unwanted contact, an express or implied threat of
8 physical, emotional, or other harm, that would
9 reasonably place an individual in fear of immediate or
10 future harm and that is employed to compel someone to
11 engage in sexual contact.

12 Force is the use of threat of physical violence
13 or intimidation to overcome an individual's freedom of
14 will to choose whether or not to participate in sexual
15 contact.

16 Q. And the definition in the Title IX Policy for
17 "coercion" requires that the person being coerced is
18 placed in -- reasonably placed in fear of immediate or
19 future harm; correct?

20 A. I'm sorry. Can you say that again.

21 Q. This definition of "coercion" in the Title IX
22 Policy requires that someone be placed in fear of
23 immediate or future harm; correct?

24 A. Yes.

25 Q. And that they reasonably be placed in fear of

1 immediate or future harm?

2 A. Correct.

3 Q. So it's a reasonable person standard?

4 A. Yes.

5 Q. And you're familiar with reasonable person's
6 standards, having gone to law school?

7 A. Yes.

8 Q. Now, the complaint process, the Title IX Complaint
9 Process, previously marked as Exhibit 3, provides -- do
10 you want to see that, the prior section? I'll start
11 out on page four. But that section, Section III deals
12 with the investigative report; correct?

13 A. Yes.

14 Q. And it continues on to page four?

15 A. Yes.

16 Q. And it goes on to state that, (Reading:) The
17 investigation report will be shared with the Title IX
18 Program Officer, as well as the complainant and
19 respondent to review before it is finalized.

20 A. Correct.

21 Q. There's nothing in the Title IX Complaint Process
22 that provides that you -- strike that.

23 To your knowledge, neither the complainant, Beau
24 or Allie, received a copy of Exhibit 10?

25 A. And Exhibit 10 is the draft report?

1 Q. I'll show it to you.

2 A. No. They didn't receive a copy.

3 Q. So it provides that the investigation work will be
4 shared with the Title IX Program Officer as well as the
5 complainant and respondent to review before it's
6 finalized?

7 A. Correct.

8 Q. There's nothing in the complaint process that
9 provides for you to receive an initial draft copy
10 before the interim report is sent to the complainant
11 and respondent?

12 A. It doesn't specifically state that, no.

13 Q. In any event, you received the draft report from
14 Ms. Perkins?

15 A. Yes.

16 Q. Now --

17 MR. RATCLIFFE: Eleven.

18 MR. RICHARD: It's fine, your Honor, full.

19 THE COURT: All right. Eleven will be full.

20 (Plaintiff's Exhibit 11 admitted in full.)

21 Q. I'm going to show you Exhibit 11. I want to start
22 with the e-mail chain. The third page of Exhibit 11
23 references an attachment?

24 A. Yes.

25 Q. To your knowledge, was that the draft report which

1 has previously been entered as Exhibit 10?

2 A. Yes.

3 Q. In fact, the e-mail is dated February 29 to you.
4 So on Monday, February 29, 2016, at 2:36 p.m., Djuna
5 Perkins wrote, (Reading:) Attached is a draft report
6 as well as photographs that comprise Appendix E.
7 Should I resend the exhibits as I have labeled them, or
8 will you assemble those?

9 And then you respond at 3:22 p.m.; correct?

10 A. Correct.

11 Q. And eventually, there is another e-mail where you
12 discuss or where Djuna sends you an e-mail indicating
13 that, (Reading:) I meant to say, when I sent you the
14 report, that the last section on the respondent's
15 conspiracy claim, that this claim forced me to include
16 some information about the respondent's interactions
17 with -- I felt that it was important to include some
18 discussion of the claim because he was so adamant about
19 me interviewing -- name expunged -- and I think
20 it's -- it is -- this conversation that convinced him
21 there was some conspiracy against him. However, now
22 that he sees this explanation, he accepts it. I
23 thought it would be easy to simply redact that section
24 so there is no mention of the respondent interaction.

25 Correct?

1 A. Correct.

2 Q. And you then respond to Ms. Perkins; correct?

3 A. Correct.

4 Q. And what do you say in your response?

5 A. Would you like me to read it in full?

6 Q. Sure.

7 A. I say, (Reading:) Hi, Djuna: Attached is a
8 red-lined version. I want to make sure you are
9 comfortable with any proposed changes. Some are
10 technical, (specific titles of Brown
11 offices/positions), and a few are substantive (this
12 case is proceeding under the old Code definitions
13 because it occurred prior to the implementation of the
14 new policy). In some cases, I made comments with
15 clarifying questions. If you want to discuss any of
16 those, let's arrange a time to talk tomorrow.

17 Once you approve -- you agree with and we
18 address any outstanding comments, I will have Jessica
19 redact student names and send a finalized PDF to you.
20 At that point you can share it with the parties and
21 request statements and response -- clarifying details,
22 corrections, et cetera. I think Jessica sent a
23 template e-mail that she generally uses, but if not,
24 she can. Let me know.

25 Next paragraph. (Reading:) I agree that if

1 John wants the conspiracy claim in, it requires the
2 context of the other claims/allegations; otherwise, it
3 is very confusing about how a conspiracy exists. He
4 can outline any concerns he may have in his response
5 statement with you, and it can be addressed before it
6 goes to the panel. The panel will not receive
7 information outside the report in any referenced
8 materials.

9 I would really like to get this to them by the
10 end of the day tomorrow. With thanks, Amanda.

11 Q. And in that e-mail you say, The panel will not
12 receive information outside the report in any
13 referenced materials.

14 What does that mean?

15 A. I was referencing understanding that the
16 respondent, as the complainant, may request changes to
17 the report and that information be removed from the
18 report, and helping Djuna, to remind her about our
19 process, that the panel wouldn't receive this interim
20 draft, so that it was a safe chance to them to respond,
21 knowing that the finalized report could address their
22 concerns.

23 Q. So basically the complaint process requires that
24 all of the information that the panel receives, factual
25 information, comes in the form of the investigative

1 report; correct?

2 A. Correct. The investigative report and attached
3 exhibits or reference materials.

4 Q. Now, also in this e-mail that you send to
5 Ms. Perkins, you reference some substantive changes --
6 strike that.

7 First you reference some technical changes;
8 correct?

9 A. Correct.

10 Q. Those are specific titles of Brown officers and
11 positions?

12 A. Correct.

13 Q. And you also reference a few substantive changes?

14 A. Correct.

15 Q. And "substantive" means important or meaningful;
16 correct?

17 A. Yes. It had more substance to it than changing
18 the name of Brown Department of Public Safety, for
19 example.

20 Q. And one of the substantive changes was that this
21 case is proceeding under the old Code definitions
22 because it occurred prior to the implementation of the
23 new policy?

24 A. Correct.

25 Q. And now --

1 MR. RATCLIFFE: Twelve.

2 MR. RICHARD: Full, your Honor.

3 THE COURT: Twelve will be full.

4 (Plaintiff's Exhibit 12 admitted in full.)

5 Q. Show you what's been marked as Exhibit 12 and ask
6 you if you recognize that.

7 A. I do.

8 Q. What is Exhibit 12?

9 A. This is the red-lined version I referenced in the
10 e-mail to Djuna.

11 Q. Okay. And so Exhibit 12, basically what you did
12 is you took Exhibit 10 and provided comments in the
13 form of a red-line version?

14 A. Correct.

15 Q. And that's Exhibit 12?

16 A. Correct.

17 Q. And in your e-mail you reference the substantive
18 changes, some of the substantive changes, and those
19 substantive changes, you excised reference to the Brown
20 University Sexual and Gender-Based Harassment, Sexual
21 Violence, Relationship and Interpersonal Violence and
22 Stalking Policy?

23 A. Correct.

24 Q. And you excised reference to, under that policy,
25 Offense VII(a), Sexual and Gender-Based Harassment?

1 A. Correct.

2 Q. You excised reference to Offense VII(b), Sexual
3 Assault?

4 A. Correct.

5 Q. You also excise reference to definition VIII(a),
6 Consent?

7 A. Correct.

8 Q. And definition VIII(b), Coercion?

9 A. Correct.

10 Q. And that's because Brown was proceeding under the
11 2014-'15 Code of Student Conduct?

12 A. Correct.

13 Q. And the 2014-'15 Code of Student Conduct didn't
14 have the definitions of "consent" that we read into the
15 record earlier that were in the Title IX Policy?

16 A. Correct. The 2014-'15 Code did not have a
17 definition of "consent."

18 Q. It didn't have the definition of "coercion" that
19 we read into the record that was from the Title IX
20 Policy; correct?

21 A. It did not have a definition of "coercion."

22 Q. Now, prior to receiving Ms. Perkins' draft report,
23 Exhibit 10, you had at least one telephone conference
24 with the Office of General Counsel about whether the
25 Title IX panels could reference the 2015-'16 Title IX

1 Policy for the issue of consent?

2 MR. RICHARD: Objection, your Honor, to the
3 extent it's seeking to get into attorney-client
4 privileged communications. She can answer if they had
5 a communication. The substance I would object to.

6 THE COURT: Are you going there?

7 MR. RATCLIFFE: They have raised -- in the
8 deposition they have raised privilege. At her
9 deposition she did answer this question. I will not go
10 there if they're continuing to assert the privilege.

11 THE COURT: All right. Well, clearly they are
12 continuing to assert the privilege, so I don't think
13 you can inquire into the substance unless you can show
14 that it's been waived.

15 MR. RATCLIFFE: Fine.

16 THE COURT: Okay.

17 Q. You had at least one conference with the Office of
18 General Counsel; correct?

19 A. Correct.

20 Q. In fact -- strike that.

21 You had one conference with the Office of
22 General Counsel regarding whether or not Title IX
23 panels could consider -- strike that.

24 You had one communication with Title IX panel --
25 excuse me -- one communication with the Office of

1 General Counsel. That was a general communication,
2 correct, regarding whether a panel that's hearing a
3 case in 2015-'16 could consider that addressed conduct
4 had occurred the prior year could consider the current
5 definition of "consent"?

6 MR. RICHARD: Objection, your Honor. I believe
7 the question is asking the witness to confirm the
8 content of a privileged communication.

9 THE COURT: It sounds like you are, but doesn't
10 it -- isn't this essentially demonstrated by the e-mail
11 that is Exhibit 7, I believe, from Mr. Grabo to you
12 stating that because the incident took place last year,
13 the provisions of last year's Code will apply?

14 MR. RICHARD: I don't think 7's been admitted
15 yet, your Honor, but --

16 THE COURT: Oh, I'm sorry. It has been referred
17 to. Maybe you didn't move it.

18 MR. RATCLIFFE: I can move it as full. I
19 believe that there's no objection.

20 MR. RICHARD: There's no objection to it.

21 THE COURT: Okay. So let's make 7 full.

22 (Plaintiff's Exhibit 7 admitted in full.)

23 THE COURT: So what I'm asking you is doesn't
24 that provide the information that you need without
25 having to ask this witness about privileged

1 communications?

2 MR. RATCLIFFE: It does not, your Honor,
3 because --

4 THE COURT: It does not?

5 MR. RATCLIFFE: No, because the issue is she had
6 communications -- what I will do, your Honor, is I can
7 just make an offer of proof that there is information
8 that Ms. Walsh communicated --

9 THE COURT: Stay at the mic so we can pick it
10 up.

11 MR. RATCLIFFE: I'll make an offer of proof that
12 Ms. Walsh communicated to Gretchen Schultz, the Chair
13 of the Title IX panel, that she had spoken with the
14 Office of General Counsel, and that the Office of
15 General Counsel indicated that panels sitting this
16 year, 2016, addressing conduct that occurred the prior
17 year, could consider the definition of "consent" in the
18 Title IX Policy. That definition, which was excised
19 from or reference of that definition was excised from
20 Exhibit 12, that's my offer of proof.

21 THE COURT: All right. Well, let's just think
22 this through. Can't you establish factually that this
23 occurred between Ms. Walsh and Ms. Schultz, in your
24 examinations of those two, without inquiring into what
25 advice they were given by the Office of General

1 Counsel?

2 MR. RATCLIFFE: Sure.

3 THE COURT: I think you can do that and
4 establish what the facts are, and I'm not sure you then
5 have to go into the nature of the advice.

6 Do you agree, Mr. Richard?

7 MR. RICHARD: Yes, your Honor . Ms. Schultz will
8 testify there was a discussion that Ms. Walsh and
9 Ms. Schultz had the morning of the panel hearing.

10 THE COURT: All right. Go ahead.

11 MR. RATCLIFFE: I just want it on the record
12 that I want to address because -- I'm not going to get
13 into the content, but that there were two specific
14 communications that Ms. Walsh had with the Office of
15 General Counsel.

16 THE COURT: Okay. I think you can ask if she
17 had those conversations, but not what the substance of
18 them were.

19 Q. You had two specific communications with the
20 Office of General Counsel regarding the consideration
21 of the definition of "consent" in the 2015-'16 Title IX
22 Policy with respect to allegations that occurred in
23 2014-'15; correct?

24 MR. RICHARD: Objection, your Honor. Same
25 objection. He seems to be summarizing the substance of

1 what he believes the privileged communications
2 entailed.

3 THE COURT: I agree. Sustained.

4 (Pause.)

5 THE COURT: If I could just interject. I think
6 it would be permissible for you to ask if she had two
7 conversations with the Office of General Counsel about
8 this report and about the relevant policy sections that
9 apply. I think that would be perfectly permissible,
10 and then you can get into the other substance that
11 occurred between her and Ms. Schultz.

12 Q. You had two communications with the Office of
13 General Counsel regarding generally about
14 application -- you had two communications with the
15 Office of General Counsel, correct, regarding the issue
16 of consideration of consent?

17 A. Yes.

18 Q. And those communications, one was general;
19 correct?

20 A. Correct.

21 Q. And it was just generally how are we going to deal
22 with this next year?

23 MR. RICHARD: Objection, your Honor.

24 THE COURT: Sustained.

25 Q. One was specific to Beau's case?

1 A. Correct.

2 THE COURT: I think you're digging around in the
3 conversation between Ms. Walsh and General Counsel, and
4 I think that really --

5 MR. RATCLIFFE: That has been disclosed.

6 THE COURT: The fact that she had the
7 conversations, but they're asserting the privilege.
8 And I don't think you've established that it's been
9 waived, have you? I don't think you've tried to.

10 MR. RATCLIFFE: I have not, your Honor. They
11 have asserted the privilege. Certain information was
12 provided, but they have asserted the privilege and they
13 have asserted it throughout the deposition, so I won't
14 go any further.

15 THE COURT: So I think it's a matter of just
16 establishing that without getting into the substance of
17 what the conversations with General Counsel was or
18 were, did you take certain actions with respect to this
19 or that, and so forth. I think that's how you can do
20 it.

21 Q. When you excised reference to the definition of
22 "consent" in Exhibit 12, you had had at least one
23 communication with the Office of General Counsel;
24 correct?

25 A. At that point, yes.

1 Q. And I believe you -- you don't recall when the
2 second communication occurred, do you?

3 A. I don't recall.

4 Q. You don't know if it was before or after
5 February 29 of 2016?

6 A. It was after.

7 Q. It was after. Okay.

8 Now, at some point after you sent back your
9 red-line version of the draft report to Ms. Perkins,
10 she provided you another version of the report;
11 correct?

12 A. Correct.

13 Q. And for purposes of identifying the different
14 versions, we have been referring to this as the interim
15 report; correct?

16 A. Correct.

17 Q. And the interim report was the one that was shared
18 with Beau and Allie so that they could make comments;
19 correct?

20 A. Correct. Interim or initial; in the complaint
21 process it's referred to as "initial."

22 Q. We can refer to it as "initial."

23 So the initial report, the initial report
24 actually wasn't the initial report. The initial report
25 that you received, you received a report prior to the

1 report being shared with the respondent and the
2 complainant?

3 A. Correct.

4 Q. So just for the sake of clarity, I'll refer to
5 this as the interim report.

6 THE COURT: This is Exhibit 13?

7 MR. RATCLIFFE: Yes.

8 THE COURT: Is there any objection?

9 MR. RICHARD: No, your Honor.

10 THE COURT: All right. Thirteen will be full.

11 (Plaintiff's Exhibit 13 admitted in full.)

12 Q. I'm showing you Exhibit 13 and ask if you
13 recognize that.

14 A. Yes.

15 Q. And that is, as we've referred to it, the interim
16 report that was shared with the complainant and the
17 respondent?

18 A. Correct.

19 Q. And under Section III, relevant policy section,
20 what section is referenced?

21 A. The offense is III, Sexual Misconduct, under the
22 '14-'15 Code of Student Conduct.

23 Q. And there's no reference to the definition of
24 "consent" in the Title IX Policy?

25 A. There is not.

1 Q. There's no definition -- there's no reference to
2 the definition of "coercion" in the Title IX Policy?

3 A. No, there is not.

4 Q. Now, the policy -- the Title IX Policy provides
5 that the complainant and the respondent may file
6 comments to the initial report?

7 A. Not the Title IX Policy. The complaint process.

8 Q. The complaint process. Excuse me.

9 A. Yes.

10 Q. And in fact in this case both the complainant and
11 the respondent filed comments; correct?

12 A. Correct.

13 MR. RATCLIFFE: Fourteen.

14 MR. RICHARD: Fourteen may be full, your Honor.

15 THE COURT: Thank you. Fourteen will be full.

16 (Plaintiff's Exhibit 14 admitted in full.)

17 Q. I'm showing you what's been marked as Exhibit 14
18 and admitted as a full exhibit. Do you recognize that
19 e-mail?

20 A. Yes.

21 Q. And who is that from?

22 A. The e-mail is from Laura Dunn, who is the advisor
23 for the complainant.

24 Q. And the e-mail references Allie's comments;
25 correct?

1 A. Correct.

2 Q. And there's also a letter. So in the comments,
3 there's a letter from Laura Dunn; correct?

4 A. Correct.

5 Q. Does the complaint process allow for direct
6 communication between counsel and you?

7 A. The complaint process -- effectively
8 administrators don't coordinate directly with
9 attorneys, to the best that we can. Attorneys often
10 reach out to us. So it's really in the capacity if
11 they're acting as an advisor, they often are reaching
12 out to administrators directly.

13 Q. So is it your testimony that the complaint process
14 allows for advisors to communicate directly with you
15 without going through the student?

16 A. Advisors often participate in calls and meetings
17 with the student and can participate in those calls and
18 meetings. What we don't permit them to do is
19 communicate with us without the student being privy to
20 the conversation.

21 Q. The complaint process is silent -- the complaint
22 process is silent with respect to advisors who are
23 attorneys communicating directly with you; correct?

24 A. The complaint process addresses the role of
25 advisors. Some of those advisors may be attorneys, but

1 students can select whoever they want, so some advisors
2 are not attorneys.

3 Q. I'm showing you Exhibit 3, and Section V deals
4 with advisors; correct?

5 A. Correct.

6 Q. And could you read that into the record.

7 A. Sure. (Reading:) Complainants and respondents
8 are entitled to be accompanied and assisted by an
9 advisor of their choosing at both formal and informal
10 meetings, investigation interviews, and, if applicable,
11 a subsequent Title IX Council panel hearing. A pool of
12 trained advisors is available to the parties, subject
13 to their availability. There is no requirement that
14 the advisor be chosen from this pool or be an
15 individual from the Brown community.

16 Advisors may not participate in the process or
17 speak on behalf of complainant or respondent, although
18 they may ask to suspend any meetings, interviews or
19 hearings briefly to provide consultation.

20 Complainants and respondents may choose to have
21 an attorney serve as their advisor, but accommodations,
22 include scheduling of interviews or hearings, will not
23 be made for advisors, including attorneys, if they
24 unduly delay the process.

25 Q. Where in that complaint process does it provide

1 that an advisor on the behalf of the complainant may
2 communicate directly with you, as the Title IX
3 coordinator?

4 A. It doesn't say that they may communicate directly,
5 but it says that they may be accompanied or assisted,
6 so often advisors, in accompanying or assisting, do
7 send scheduling e-mails, other e-mails, et cetera.

8 Q. Well, advisors accompany or assist their advisee
9 when they're being interviewed; correct?

10 A. I'm sorry. Can you ask that again.

11 Q. Advisors accompany and assist their advisee when
12 the advisee is being interviewed; correct?

13 A. If the advisee chooses, yes.

14 Q. And at that interview the advisor may not
15 participate in the process; correct?

16 A. At that interview they can't speak on behalf of
17 their advisee; correct.

18 Q. In any event, in this e-mail to you, Laura Dunn
19 was speaking on behalf of Allie; correct?

20 A. She was submitting something for her client and
21 Allie was included on the e-mail, yes.

22 Q. In fact, Allie's comments were in two sections;
23 correct? Allie's comments that are under her name --
24 correct?

25 A. I don't have --

1 Q. Why don't we just do this. We can go through the
2 document.

3 So there is the response statement, and you've
4 been using Ann Roe, but that's Allie; correct?

5 A. Correct.

6 Q. And she references various portions of the report
7 that she would like changed; correct?

8 A. Correct.

9 Q. It goes on to address other things. For example,
10 Respondent states that the complaint is disclosure,
11 that she was -- that she wants certain things out
12 regarding sexual history; correct?

13 A. Correct.

14 Q. She wants certain information redacted from the
15 report relating to prior sexual history. And those are
16 Allie's comments, correct, to Djuna?

17 A. Correct.

18 Q. It goes on; there's further commentary,
19 page three, four, five, six, seven, eight, nine.

20 So Allie provides nine pages of commentary
21 regarding your draft report -- not the draft report --
22 the interim report; correct?

23 A. Correct.

24 Q. And then she has excerpts from a note that was
25 written by the advisor; correct?

1 A. Correct.

2 Q. And that's addressed to the Title IX officer;
3 correct?

4 A. It's addressed to both me and to Attorney Djuna
5 Perkins, the investigator.

6 Q. It says, To Title IX Coordinator Amanda Walsh and
7 Attorney Djuna Perkins?

8 A. Correct.

9 Q. And she goes on to reference compliance with
10 certain federal law; correct? Look at the letter.
11 Maybe you can tell us what the letter was.

12 A. I haven't reviewed the letter in some time, but,
13 yes, I do recall that she was reiterating in some
14 respects some of what was included in the other letter;
15 for example, removal of the reference to her sexual
16 history.

17 Q. And there is a four-page -- the letter is four
18 pages; correct?

19 A. I don't see page numbers, but, yes. Oh, yes.

20 Q. Ms. Dunn was communicating directly with you on
21 behalf of Allie; correct?

22 A. Yes.

23 Q. And nowhere in the complaint process does it
24 indicate that that is allowed; correct?

25 A. It doesn't indicate that that's allowed, no.

1 Q. In fact, the complaint process says that -- we can
2 put it on here.

3 Can you read that?

4 A. Yes.

5 Q. It says that it provides that may not speak on
6 behalf of the complainant, correct, or respondent?

7 A. Correct. So advisors cannot answer questions on
8 behalf of the complainant or the respondent.

9 MR. RATCLIFFE: I move to strike that last
10 portion.

11 MR. RICHARD: Objection, your Honor.

12 THE COURT: No. Sustained. The motion to
13 strike is granted.

14 You can always follow-up on cross.

15 MR. RATCLIFFE: Exhibit 15. Is this full?

16 MR. RICHARD: Let me just locate it. Sure.
17 Full.

18 THE COURT: All right. Fifteen will be full.

19 (Plaintiff's Exhibit 15 admitted in full.)

20 Q. I'll show you what's marked as 15. Do you
21 recognize that?

22 A. It's an e-mail to me from Djuna Perkins on
23 March 7th that looks like it's in response to Laura
24 Dunn's letters that you were just referencing.

25 Q. Could you read the e-mail.

1 A. It says, (Reading:) Hi Djuna: The letter Laura
2 Dunn sent in addition to Ann's response includes
3 requests that are largely up to the investigator. It
4 would be helpful if you could review those proposed
5 changes, in addition to those contained in the
6 response, and we connect by phone at some point to
7 discuss your decisions. Anything that doesn't get
8 changed I will address by letter to -- it's redacted,
9 but I believe it says -- Allie and Laura.

10 Let me know when you expect to review these
11 letters and incorporate the changes and we can schedule
12 a time to discuss. Hope you had a nice weekend.
13 Warmly, Amanda.

14 Q. And there's nothing in the complaint process that
15 allows you, as the Title IX Program Officer, to
16 communicate directly with an advisee's attorney;
17 correct?

18 A. There's nothing that prevents me from --

19 Q. Advisor.

20 A. Generally how I handle the situation is by adding
21 the student --

22 Q. I just asked a question. Is there anything in the
23 complaint process that allows --

24 MR. RICHARD: Objection, your Honor. Can she
25 answer?

1 THE COURT: She has to answer the question
2 that's actually put to her, not comment on it.

3 So just listen to the question and answer it.
4 Mr. Richard will have an opportunity, if he wishes to
5 follow-up, when he examines you.

6 So reask your question.

7 Q. Is there anything in the Title IX Complaint
8 Process that permits you, as the Title IX Program
9 Officer, to communicate directly with an advisor for an
10 advisee?

11 A. There's nothing that states that, no.

12 Q. You didn't send a letter to Beau addressing his
13 concerns that he raised, did you?

14 A. I didn't.

15 MR. RATCLIFFE: Sixteen.

16 MR. RICHARD: It's full, your Honor.

17 THE COURT: All right. Sixteen will be full.
18 Maybe this is the -- is this the letter that you just
19 referred to? I'm a little confused.

20 MR. RICHARD: I thought it was 16.

21 MR. RATCLIFFE: Sixteen. There are --

22 THE COURT: Let me -- I just want to make sure.
23 The e-mail that you just referred to, which is
24 contained in Exhibit 15, from Ms. Walsh to Ms. Perkins,
25 says the letter Laura Dunn sent in addition to Ann's

1 response, please request, et cetera.

2 So that's a reference to the letter that is
3 attached to -- it's the last of the group of documents
4 that is in Exhibit 14; correct?

5 MR. RATCLIFFE: Correct.

6 THE COURT: And then at the end of that e-mail
7 it says, (Reading:) Anything that doesn't get changed,
8 I will address by letter to Allie and Laura.

9 Now, I thought you then asked her a question
10 about did she send a letter to Beau addressing his
11 concerns, and she answered no. So has that letter been
12 admitted yet?

13 MR. RATCLIFFE: That letter has not been.

14 THE COURT: But you're going to get to that?

15 MR. RATCLIFFE: We have not received it in
16 discovery, your Honor. We didn't receive any letter.

17 THE COURT: Why not? I don't understand.

18 MR. RICHARD: Your Honor, we've given everything
19 we have, so --

20 Q. Did you send the letter?

21 A. I don't believe I did.

22 THE COURT: Just so it's all clear in the record
23 at the same place, you're saying that even though your
24 letter refers to a letter that you're going to write to
25 Ann/Allie and Laura, you never actually wrote such a

1 letter?

2 THE WITNESS: I don't believe so, because my
3 intent was to draft a letter if the items couldn't be
4 addressed by the investigator. So in the event that
5 there were no remaining items, there would be no need
6 for me to address those.

7 THE COURT: Okay.

8 MR. RATCLIFFE: Exhibit 16.

9 MR. RICHARD: Sixteen, Richard?

10 MR. RATCLIFFE: Yes.

11 MR. RICHARD: Full, your Honor.

12 THE COURT: All right. Sixteen is full.

13 (Plaintiff's Exhibit 16 admitted in full.)

14 Q. Showing you what's been marked as Exhibit 16, I'm
15 going to ask you if you recognize that.

16 A. I'm not on these e-mails, but I believe it was
17 forwarded to me, and it is Beau's response statement to
18 the interim report, directed to Djuna.

19 Q. And --

20 A. And then, I suppose, a follow-up with maybe an
21 updated version.

22 Q. In any event, you received a copy of Beau's
23 request -- his comments to the interim report; correct?

24 A. Correct.

25 Q. The first concern that Beau raised was the sexual

1 assault standard; correct? The sexual misconduct
2 standard?

3 A. Yes.

4 Q. And he indicates that, (Reading:) My encounter
5 with Allie at Faunce Hall occurred on November 10,
6 2014. The Code of Student Conduct applicable to my
7 conduct at the time 2014-'15 Code. Associate counsel,
8 Michael Grabo, confirmed this to me in writing on
9 November 4, 2015. In that version of the Code, the
10 definition of the sexual misconduct is vastly different
11 than what it is now. In 2014-'15 -- excuse me. In the
12 2014, the Code defines "sexual misconduct" as follows.

13 And Beau then references what we have already
14 referenced, the sexual misconduct, III(a) and III(b),
15 and then references the comment.

16 And he goes on to discuss that, (Reading:) Quite
17 a bit of the report, including Footnote 22, focuses on
18 the possibility that I coerced Allie to engage in
19 sexual conduct. That, however, is not part of the 2014
20 definition of this offense. The term does not appear
21 in that definition, so I respectfully suggest that your
22 statement in Footnote 22 that, quote, "The central
23 issue in this case is whether the consent was obtained
24 through coercion," is incorrect. In any event, because
25 panels are now trained to apply a different definition

1 of "sexual misconduct" than what was applied in my
2 case, the distinction is important and should --

3 THE COURT: Slow down. Slow down.

4 MR. RATCLIFFE: Sorry. All right.

5 Q. I'm going pick up at the top of page two,
6 referring to panels, (Reading:) Now trained to apply a
7 different definition of "sexual misconduct" than what
8 applies in my case. This distinction is important and
9 should be conspicuously set forth in your report.

10 Furthermore, your report does not contain a
11 definition of coercion, which is the use of force or
12 intimidation to obtain compliance. There's absolutely
13 no evidence that I intimidated or threatened the
14 complainant in order to satisfy my sexual desires.

15 Did I read that correctly?

16 A. Yes.

17 Q. In fact, he's -- strike that.

18 Now, if we look at -- now, to your knowledge,
19 was this issue addressed? Was this issue -- how was
20 this issue resolved with respect to Mr. [REDACTED]
21 -- excuse me -- to Beau's comments?

22 A. I don't recall exactly how the report was updated.

23 Q. In any event, there was a final report that was
24 issued?

25 A. Yes.

1 Q. And the final report was issued after
2 consideration of both Allie's and Beau's comments by
3 Djuna Perkins and you?

4 A. Yes.

5 Q. You communicated with Djuna Perkins regarding the
6 various issues at play; correct?

7 A. I gave Djuna Perkins the opportunity to
8 communicate questions that she felt like were less
9 discretion to the investigator and implicated the
10 complaint process itself.

11 Q. You communicated with her regarding, for example,
12 one of the issues that Djuna Perkins communicated with
13 you was Beau's objection to including prior bad acts in
14 the report; correct?

15 A. Correct.

16 Q. And in fact, Ms. Perkins indicated that perhaps
17 you should communicate with Beau or with Beau and his
18 advisor or just Beau and say, Okay, if you want to
19 allege the conspiracy claim, we're going to leave this
20 in; but if you don't, we're going to take it out?

21 A. When you say that, are you referencing the e-mail
22 I read earlier?

23 Q. Well, I'm referencing a communication that you had
24 with Djuna Perkins regarding Beau's objection to prior
25 bad acts. We can look at that portion of his objection

1 if you'd like.

2 A. I recall that he asked for certain information to
3 be excluded about prior bad acts.

4 Q. Okay. Let's go over that.

5 MR. RICHARD: What exhibit is this?

6 MR. RATCLIFFE: Exhibit 19.

7 Q. Beau references, (Reading:) On pages 26 and 27,
8 On these pages are several paragraphs of statements
9 largely from Witness 9 but also from others that you
10 state on page two are presented only to the extent they
11 are relevant to respondent's claim that Witness 9 and
12 the complainant conspired against him to present
13 fabricated charges.

14 Do you recall what information Beau conveyed to
15 Ms. Perkins regarding the allegation of conspiracy?

16 A. I recall that he put forward a witness that he
17 felt supported that claim.

18 Q. He put forward a witness that overheard them
19 conversing, I believe it's called the Ratty?

20 A. Yes.

21 Q. What's the Ratty?

22 A. The Ratty is a dining hall at Brown.

23 Q. And overheard Allie and Witness 9 conversing about
24 Beau; correct?

25 A. Correct.

1 Q. And in fact, there's reference to that
2 communication in Ms. Perkins' report?

3 A. Correct.

4 Q. And the witness that Beau put forward confirmed
5 that he overheard Allie and Beau -- excuse me, Allie
6 and Witness 9 communicating about Beau?

7 A. I believe he did, yes.

8 Q. And so the complaint process itself indicates that
9 prior bad acts is generally not -- character evidence
10 generally isn't admissible or shouldn't be in the
11 report?

12 A. Correct. There's a section relating to character
13 evidence.

14 Q. We can address that. We can show that.

15 There's reference in the complaint process to
16 types of evidence that refer to additional evidence;
17 correct? Section II on the page I'm showing you?

18 A. Correct.

19 Q. It has -- from Exhibit 3. It indicates, does it
20 not, that both the complainant and the respondent are
21 committed to provide other relevant evidence to the
22 investigator. Evidence includes any facts or
23 information presented to support an assertion that may
24 include text messages, e-mail exchanges, timelines,
25 receipts, photographs, et cetera. Any documentation

1 shared by the complainant or the respondent with the
2 investigator will be provided to the other party. The
3 investigator may also consider additional documents or
4 documents, items or other relevant information.

5 Goes on to say, does it not, information that
6 does not directly relate to the facts at issue but
7 instead reflect upon the reputation, personality,
8 quality or habits of an individual is character
9 evidence and is not relevant to the determination of
10 whether there is a policy violation.

11 A. Correct.

12 Q. And in any event, in this case, Mr. [REDACTED]
13 was objecting to -- excuse me, Beau was objecting to --
14 was referring to portions of Ms. Perkins' report;
15 correct, under pages 26 and 27?

16 A. Yes.

17 Q. And that includes information regarding Witness 4
18 posing at a party at his apartment with numerous
19 members of mock trial, including Witness 9, Witness 4
20 and Witness 3 but not complainant were present at the
21 party which Witness 3 states took place the day of the
22 Harvard-Brown football game, which occurred on
23 September 26th. The respondent confronted Witness 9 in
24 a hostile manner and mocked her for reporting him to
25 the E-Board. To Witness 4, it was clear that the

1 respondent was angry about the decision not to make him
2 a captain and angry at Witness 9 for complaining about
3 him. Witness 9 states that she told her parents and
4 the complainant about what happened with the respondent
5 at the party the next day and all were very upset.
6 Witness 5 said after the incident at the party the
7 complainant seemed very shaken even though she had not
8 even attended the party and it did not directly impact
9 her. Witness 9 said her parents told her to seek help
10 from the University so she called Brown's Department of
11 Public Safety, DPS, and asked how to report an incident
12 of bullying. DPS referred her to the Title IX Program
13 Officer. The complainant states --

14 MR. RICHARD: Objection, your Honor. Are we
15 going to read the entire document? Is there a
16 question?

17 THE COURT: No, I think that's a good point. I
18 think much of what's being read is really not
19 necessary, so maybe we could just refer to the
20 documents. I think it will make things go a little
21 faster. And you can talk about the gist of the
22 documents and be more effective.

23 Q. So in any event, Beau was objecting to the
24 inclusion of character evidence in the report, correct?

25 A. I'm sorry. If you could flip back to the prior

1 page on this it would be helpful.

2 (Witness reads document.)

3 A. So yes, he's saying that they should be removed
4 entirely.

5 Q. And it was -- you had a conversation with
6 Ms. Perkins about this request; correct?

7 A. Correct.

8 Q. And Ms. Perkins told you that she would be willing
9 to take it out if Beau agreed to forego the conspiracy
10 claim?

11 A. My recollection of the conversation was
12 Ms. Perkins was asking me how we address -- asking me
13 whether this section as included was a violation of our
14 complaint process, the character evidence section.

15 Q. Did you have any discussion with Ms. Perkins about
16 taking out the character evidence reference?

17 A. I recall that again she was asking whether or not
18 that was permitted under our complaint process.

19 Q. Did you have a discussion with Ms. Perkins as to
20 whether or not the character evidence should be removed
21 from the report if Beau in return agreed to waive the
22 conspiracy claim?

23 A. I'm sorry. Can you repeat the question.

24 Q. Did you and Ms. Perkins discuss whether or not to
25 contact Beau and basically say to him, You want the

1 character evidence out, remove your conspiracy claim?

2 A. I don't recall that specifically. If we -- it
3 generally sounds like a conversation that we may have
4 had. Had she asked me that question, I would have told
5 her that that wasn't permissible under our complaint
6 process to do that.

7 THE COURT: Whether what was permissible under
8 the complaint process?

9 THE WITNESS: That we would tell Beau -- that we
10 would -- it sounds like what Attorney Ratcliffe is
11 asking me is we would essentially negotiate the
12 information that Beau provided and say if you withdraw
13 these statements we would remove these other
14 statements.

15 THE COURT: Okay.

16 Q. Basically, Beau provided information from one
17 witness that overheard a conversation between Allie and
18 Witness 9 at the Ratty; correct?

19 A. Correct.

20 Q. And that information was basically to the extent
21 that we got to get him, we got to get Beau; that they
22 were out to get him in some way; correct?

23 A. I don't remember the exact conversation but it was
24 something that he felt indicated a conspiracy against
25 him.

1 Q. Indicated animus and a desire to get him in
2 trouble?

3 A. I believe that was, yes, the content of the
4 conversation.

5 Q. And as a result of raising that one conversation
6 and pointing Ms. Perkins to that one conversation, the
7 report contained -- it's referenced in the report as
8 well as in Beau's response, goes on for -- you can look
9 at it briefly. Goes on for one, two -- basically
10 almost two full pages, reports pages 26 and 27 of the
11 report, which is all character evidence regarding Beau?

12 A. I missed what the question was.

13 Q. Let's look at the interim report. I'll just put
14 it up here so you can --

15 MR. RICHARD: Which exhibit, please?

16 MR. RATCLIFFE: Exhibit 13.

17 Q. Can you read that?

18 A. Yes.

19 Q. Why don't you look at it, take as much time as you
20 need and indicate -- I have a question.

21 A. Okay.

22 (Witness reads document.)

23 A. Can you just flip to the next page. Thank you.

24 (Witness reads document.)

25 A. Okay.

1 Q. And on pages 26 and 27, that you would agree is
2 character evidence regarding Beau; correct?

3 A. The pages included both information that might be
4 character evidence and also the testimony provided to
5 Djuna Perkins from Witness 11, yes.

6 Q. That information didn't address what occurred on
7 November 10, 2014, at Faunce House?

8 A. In those two pages, no, it did not.

9 Q. It was addressing other things that Witness 9 or
10 complainant or maybe others witnessed Beau do?

11 A. Correct.

12 Q. And that information is the type of information
13 that's generally not allowed. In fact, it states in
14 the -- (Reading:) Information that does not directly
15 relate to the fact at issue but instead reflects upon
16 the reputation, personality, qualities or habits of an
17 individual as character evidence is not relevant to the
18 determination of whether there is a policy violation.

19 A. Yes, it says that.

20 Q. And the panel was addressing whether or not there
21 was a policy violation regarding an allegation of
22 sexual misconduct that occurred on November --
23 allegedly occurred on November 10, 2014?

24 A. Correct.

25 Q. And eventually, Ms. Perkins prepared a final

1 report; correct?

2 A. Correct.

3 Q. And the final report was prepared after addressing
4 the comments made by both the complainant and the
5 respondent?

6 A. Correct.

7 MR. RATCLIFFE: Seventeen.

8 MR. RICHARD: Sorry. What number, 17?

9 MR. RATCLIFFE: Seventeen.

10 MR. RICHARD: Letter to Beau?

11 MR. RATCLIFFE: I can do 18. Seventeen and 18.

12 THE COURT: You finish your conversation --

13 MR. RICHARD: We were just conferring about the
14 exhibit, your Honor. I didn't mean to --

15 THE COURT: No, no. You're not. So let's go
16 off the record for a minute.

17 (Discussion off the record.)

18 (Lunch recess.)

19 THE COURT: All right. Are we ready to
20 continue, Mr. Ratcliffe.

21 MR. RATCLIFFE: Yes, your Honor. Thank you very
22 much.

23 THE COURT: Okay. Go ahead.

24 Q. Just a couple of questions regarding -- now, you
25 had testified that when I had asked you about their

1 removal of the character evidence from the report, do
2 you recall that discussion we discussed removal of the
3 character evidence from the report?

4 A. Yes.

5 Q. And I believe it was your testimony that the
6 complaint process didn't allow for a respondent to
7 raise a theory of conspiracy and then withdraw the
8 theory when it doesn't work out?

9 A. Well, it was my testimony that the complaint
10 process doesn't have an interim -- it provides for both
11 students to be able to respond to the report and for
12 the investigator to incorporate those. It doesn't
13 allow for I felt like the type of discussion that you
14 were asking about.

15 Q. My question is so both the complainant and the
16 respondent provided information to the investigator?

17 A. Yes.

18 Q. And the complainant asked for certain things to be
19 taken out of the report; correct?

20 A. Correct.

21 Q. And certain things were taken out of the report?

22 A. Correct.

23 Q. And the respondent asked for certain things to be
24 taken out of the report; correct?

25 A. Correct.

1 Q. And one of those things that the respondent asked
2 to be taken out of the report as improper was the
3 character evidence?

4 A. He asked for certain paragraphs, yes, to be
5 removed that contained character evidence in your
6 assessment, yes.

7 Q. Because -- the information that was being provided
8 in the report didn't deal specifically with the
9 interaction between the complainant and the respondent
10 on November 10th, 2014; correct?

11 A. It dealt with his allegation regarding conspiracy.

12 Q. But the information that he was asking to be
13 withdrawn had nothing to do with the actual interaction
14 between the complainant and the respondent either
15 before, during or after the events in question?

16 A. I'm sorry. Can you repeat the question.

17 Q. The information, we went through it, you looked at
18 the information that Beau asked to be removed from the
19 report. That information dealt with other character
20 evidence of Beau regarding interaction with other
21 people other than the complainant for the most part;
22 correct?

23 A. Correct. For the most part, correct, yes.

24 Q. And specifically Witness Number 9?

25 A. Yes. Some of it had to do with Witness Number 9.

1 Q. And some of it had to do with other people that
2 had parties and other interaction with women on campus?

3 A. Correct.

4 Q. So you said that the complaint process didn't
5 allow for that information to be taken out because he
6 put forward the conspiracy allegation and he couldn't
7 change his mind after the fact?

8 A. My understanding was that he didn't withdraw the
9 conspiracy allegation. He asked for the character
10 evidence to be removed but the conspiracy allegation to
11 remain in the report.

12 Q. And my question to you earlier was did Ms. Perkins
13 suggest to you that perhaps a compromise would be Beau
14 removes the conspiracy allegation or withdraws the
15 conspiracy allegation and we withdraw all that
16 character evidence?

17 A. I said I didn't recall specifically that
18 discussion, but that had she asked that, I would have
19 said that that wasn't included in the complaint
20 process.

21 Q. Where in the complaint process?

22 A. I'm saying that there is not an interim step in
23 the complaint process that allows the investigator to
24 go back and make those sorts of suggestions to the
25 student.

1 Q. Exhibit Number 3. Do you recognize this language
2 from -- I will show you the earlier page. The
3 investigation report, this is on page four?

4 A. Yes.

5 Q. And do you want to look at that first, Section III
6 there, and then I'll refer you to the top of page five.

7 A. Okay.

8 Q. Now, there's nothing -- this section refers to the
9 investigative report being shared -- excuse me, being
10 shared with the Title IX Program Officer as well as the
11 complainant and respondent. And it then goes on to say
12 that -- and I don't want to read this whole thing but
13 within basically three days the complainant and
14 respondent made comments; correct?

15 A. Correct.

16 Q. And basically, it's up to the investigator as to
17 how to deal with those comments; correct, whether to
18 change things or to leave it the same?

19 A. That would depend on the comment made by the
20 student.

21 Q. Now, there's nothing in here specifically that
22 would have prevented Ms. Perkins from going back to
23 Mr. [REDACTED] and suggesting to him, Hey, look it, I
24 saw what you said about the character evidence; we'll
25 take it out if you withdraw the conspiracy claim?

1 A. It doesn't give her permission or prevent her from
2 doing so.

3 Q. And basically, the complaint process, the whole
4 purpose of hiring a trained investigator is so that
5 there can be an accurate and fair report; correct?

6 A. That's one of the reasons, yes.

7 Q. And do you recall another concern that Beau had
8 regarding not obtaining all of the text messages
9 between Witness 9 and the complainant?

10 A. Yes.

11 Q. Okay. And that was included in his request for --
12 in his comments; correct?

13 A. Right.

14 Q. And do you know if -- Ms. Perkins did not make any
15 changes to the report regarding that -- strike that.

16 Do you know if Ms. Perkins attempted to get the
17 additional text messages between Witness 9 and the
18 complainant?

19 A. My understanding is that she did not attempt to
20 get.

21 Q. And the text messages that were being provided
22 between Witness 9 and the complainant were sort of in
23 the nature of a fresh complaint; correct?

24 A. I'm sorry. What are you --

25 Q. Well, they were being presented to show that

1 Witness 9 and the complainant had some communication in
2 December of 2014 regarding the interaction between Beau
3 and Allie?

4 A. I don't remember specifically why they were
5 introduced. That would have been a function of the
6 investigator.

7 Q. But in any event, you are aware, are you not, that
8 there was not a complete set of text messages provided
9 by either Witness 9 or the complainant concerning their
10 communications at or about the time that they were
11 texting back and forth regarding Beau?

12 A. I'm aware that a request was made for Beau to ask
13 for a complete set, yes.

14 Q. And a complete set was not obtained?

15 A. Correct.

16 MR. RATCLIFFE: We've already marked 17 and 18,
17 your Honor.

18 MR. RICHARD: If I didn't do so I'll stipulate
19 to the full admission.

20 THE COURT: Seventeen and 18?

21 MR. RATCLIFFE: Yes.

22 THE COURT: Will be full.

23 (Plaintiff's Exhibit 17 and 18 admitted in
24 full.)

25 Q. So showing you Exhibit 17, ask you if you

1 recognize that.

2 A. I can't see the top so I'm not certain who it's
3 addressed to.

4 Q. Sorry about that. See it now?

5 A. Um-hum. (Affirmative.) It is an e-mail from
6 Djuna Perkins to Beau, to you and I am cc'd that says,
7 Attached is the finalized report and exhibit. And it
8 looks like it was sent on March 12th at 6:00 p.m.

9 Q. And Exhibit 18 is the final report. What I will
10 show you if this will assist you in determining this is
11 the final report, show you the last page. This
12 document has 29 pages, I believe. The prior document
13 had 28.

14 Do you have a memory as to how many pages the
15 final report had?

16 A. I believe this is the final -- yes, I think this
17 is the final report. I remember having an extra page.

18 Q. Now, with respect to Beau's concern regarding the
19 reference to coercion in the report, do you know if the
20 footnote that he had objected to, do you know if that
21 was changed?

22 A. I believe it was still in the final report.

23 Q. It was then changed from Footnote 22 to Footnote
24 26? I can show you Footnote 26. Can you read that?

25 A. No, I'm sorry. I can't.

1 Q. That's the footnote that he had requested -- or at
2 least he had requested reference to coercion be taken
3 out of the interim report; correct?

4 A. Correct.

5 Q. It was not?

6 A. Correct.

7 Q. And the final report also included the character
8 evidence that he had objected to; correct?

9 A. Correct.

10 Q. Now, as the Title IX Program Officer, you were
11 responsible for choosing a panel to hear Beau and
12 Allie's case?

13 A. Correct.

14 Q. And who served on that panel?

15 A. Dean Besenia Rodriguez, Katherine Trimble and
16 Kimberley Charles.

17 Q. And who was the Chair?

18 A. The Chair for all hearings during this academic
19 year was Gretchen Schultz.

20 Q. And there were no men on Beau's panel; correct?

21 A. Correct.

22 Q. And I believe that you had approximately 18 or 19
23 qualified members to serve on panels?

24 A. Approximately, yes.

25 Q. And of the 18 or 19, three were men?

1 A. Correct.

2 Q. And that because of conflicts there were no
3 qualified men to serve on Beau's panel; correct?

4 A. Correct. All three men had conflicts in this
5 case.

6 Q. Now, the complaint process indicates that all of
7 the information that the panel needs to make its
8 determination is found in the investigation report;
9 correct?

10 A. The factual information, yes. All of the factual
11 information is contained in the report.

12 Q. And the final report here references the relevant
13 policy section; correct?

14 A. Correct.

15 Q. And the relevant policy section is the 2014-'15
16 Code of Student Conduct?

17 A. Correct.

18 Q. And you provided the panel members with copies of
19 2014-'15 Code of Student Conduct; correct?

20 A. Yes.

21 Q. And you also provided them a copy of the
22 investigative report?

23 A. Correct.

24 Q. And the appendices?

25 A. Correct. And the complaint process.

1 Q. So you provided them with Exhibit 18; Exhibit 2
2 and Exhibit 3, Complaint Process?

3 A. Correct.

4 Q. You didn't provide the panel members with
5 Exhibit 4, the Title IX Policy, correct?

6 A. Correct.

7 Q. And the Title IX Policy, Exhibit 4, you had
8 excised reference to in Ms. Perkins' original report?

9 A. Correct.

10 Q. But you did provide a copy of Exhibit 4 to the
11 panel Chair, didn't you?

12 A. The Title IX Policy is Exhibit 4?

13 Q. Yes.

14 A. Yes, I did.

15 Q. And that's the same policy that you told
16 Ms. Perkins didn't apply to this case; correct?

17 A. Correct.

18 Q. And in fact, you met with Dr. Schultz the morning
19 of the hearing on April 14th; correct?

20 A. Yes.

21 Q. And you told Dr. Schultz that her packet was
22 different than the other panelists' packets; correct?

23 A. Yes.

24 Q. And that her packet included the Title IX Policy,
25 Exhibit 4?

1 A. Correct.

2 Q. You told her that if the panel chose, they could
3 choose -- they could consider the definition of
4 "consent" in the Title IX Policy?

5 A. If the panel chose, correct, yes.

6 Q. And that was the same definition that you had
7 excised from the original draft report that Ms. Perkins
8 had sent you?

9 A. Correct.

10 Q. Now, you took notes at the Title IX hearing on
11 April 14th?

12 A. Yes.

13 MR. RATCLIFFE: Exhibit 24.

14 MR. RICHARD: Stipulate to full, your Honor.

15 THE COURT: Thank you. That's Exhibit 24, it
16 will be full.

17 (Plaintiff's Exhibit 24 admitted in full.)

18 MR. RATCLIFFE: May I approach, your Honor?

19 THE COURT: Yes.

20 Q. I'm showing you what's been marked as Exhibit 24
21 admitted as full. Are those your notes?

22 A. Yes.

23 Q. And those are notes that you took during the
24 Title IX hearing on April 14th, 2016?

25 A. Correct.

1 Q. And you indicate at the beginning of your notes,
2 do you not, first thing is, (Reading:) Faculty Chair
3 goes over the checklist and Faculty Chair reminds
4 everyone we're using the 2014-'15 Code of Conduct
5 because of the timing of the allegation. Gretchen read
6 through the relevant sections of the panel. Gretchen
7 reminds the panel that the former Code did not define
8 "consent" but read through the current definition and
9 reminded the panel they are not required to use it but
10 it may be helpful in thinking about how the University
11 has viewed consent.

12 Those are your notes?

13 A. Correct.

14 Q. And in the investigative report that Djuna Perkins
15 prepared, was there any indication contained there
16 whatsoever that indicated how the University had viewed
17 consent prior to 2015?

18 A. I'm sorry. Can you repeat the question.

19 Q. Well, she says here -- in your notes, she says --
20 it says, (Reading:) Gretchen reminds the panel that
21 the former Code did not define "consent" but read
22 through the current definition and reminded the panel
23 they are not required to use it but it may be helpful
24 in thinking about how the University has viewed
25 consent.

1 In Ms. Perkins' investigative report, was there
2 any information for the panelists about how the
3 University had defined "consent"?

4 A. No.

5 Q. So as the Panel Chair, Gretchen Schultz was going
6 outside of the four corners of the investigative
7 report; correct?

8 A. Well, the report sets forth the factual
9 information. It would be the Code that would set forth
10 the information that she is describing here or the
11 relevant policy that they would look to.

12 Q. All right. Well, let's address that. The Code,
13 the 2014 Code did address, I believe we've gone over
14 this, at least with respect to -- I believe you
15 testified that the comment to Section III, Sexual
16 Misconduct, provided some guidance to students with
17 respect to how the University had viewed non-consensual
18 physical conduct of a sexual nature; correct?

19 A. Correct.

20 Q. And the University -- again, we don't have to go
21 over it again, but basically they had indicated that it
22 encompasses a broad range of behavior, acts including
23 force, threat, intimidation or advantage gained by the
24 offending student's mental or physical incapacity.

25 MR. RICHARD: Objection, your Honor. I don't

1 think that's a proper reading of what it said.

2 MR. RATCLIFFE: I was trying to paraphrase. I
3 could read the whole thing.

4 THE COURT: All right. Well, let's --

5 MR. RICHARD: He left out the word "including."

6 THE COURT: Why don't you back up, do it again.

7 MR. RATCLIFFE: Okay. I will read it again. I
8 was trying to paraphrase. I apologize.

9 Q. (Reading:) Comment: Offense III encompass a
10 broad range of behaviors including acts using force,
11 threat, intimidation or advantage gained by the
12 offended student's mental or physical incapacity or
13 impairment of which the offending student was aware or
14 should have been aware.

15 That was the guidance that the University
16 provided to students in 2014 and '15 as to the type of
17 behavior that violated Section III of the Code;
18 correct?

19 A. Correct.

20 Q. And Gretchen Schultz provided no documentary
21 evidence, did she, to the panel that the current Code
22 incorporated a definition of "consent" that had been
23 used prior to 2015 by the University; correct?

24 A. Correct.

25 Q. Basically, she told them what her opinion was?

1 A. Correct.

2 Q. Now, your notes indicate, do they not -- maybe we
3 can just go through this just briefly.

4 The Court will have this, but the way that the
5 procedure works is the opening comments by the Panel
6 Chair, Dr. Schultz; correct?

7 A. Correct.

8 Q. And she went through the checklist?

9 A. Correct.

10 Q. And we'll get to that later. And then she --
11 we've already discussed the consent issue.

12 Then Ms. Perkins came into the room?

13 A. Correct.

14 Q. And answered questions from the various panel
15 members?

16 A. Yes.

17 Q. Based on the report?

18 A. Yes.

19 Q. And those questions -- that's when you were there
20 as the Title IX Program Officer, you were taking notes
21 as to the questions and the responses of Ms. Perkins?

22 A. Yes, I was.

23 Q. And Dr. Schultz, one of the questions that she
24 asked as the Panel Chair is what prompted the
25 complainant to come forward; correct?

1 A. Correct.

2 Q. And what was Ms. Perkins' response?

3 A. Djuna Perkins states something along the lines,
4 this is a summary, that Witness 9 became fearful, in
5 her words, and after an incident at a party it seemed
6 like together they became increasingly afraid of
7 retaliation and prompted them to report.

8 Q. In fact, you had -- you had initially met with
9 Witness 9; correct, regarding an issue of a no-contact
10 order with Beau; correct?

11 A. I had initially met with Witness 9 because she
12 came forward to share information about what happened.

13 Q. And it was Witness 9 that brought to your
14 attention Allie's allegations; correct?

15 A. Correct.

16 Q. And then Witness 9 said that she was going to go
17 back and speak with Allie; correct?

18 A. Correct.

19 Q. And after that, Allie then contacted you?

20 A. Correct.

21 Q. That synopsis isn't in the information that Djuna
22 Perkins provided to the panel; is it?

23 A. The synopsis --

24 Q. That the complainant came forward at the urging of
25 Witness 9?

1 A. That is not contained in -- are you asking is that
2 how Djuna answered the question at the date of the
3 hearing?

4 Q. Right.

5 A. No.

6 Q. After Ms. Perkins answered questions from the
7 panel, the panel decided that they wanted to hear from
8 Beau first; correct?

9 A. Correct.

10 Q. There's nothing in the process that says the
11 complainant goes first?

12 A. No.

13 Q. But they decided they wanted to hear from Beau
14 first and they heard from Beau?

15 A. Yes.

16 Q. And at the hearing, Beau addresses which policy or
17 which standard would apply, right? He says,
18 Investigator conflates two different policies. Current
19 policy covered all aspects of sexual assault.

20 To your knowledge, was Beau referring to the
21 Title IX Policy?

22 A. That's the way I understood it to be at the time.

23 Q. Old policy requires force or threat of force.

24 Is that what your understanding was, that he was
25 referring to 2014-'15 Policy Code of Student Conduct?

1 A. Yes.

2 Q. That's what we previously marked as Exhibit 2.

3 He says, Not indicating there was a sexual
4 assault, mentioning it to clarify regardless of the
5 fact there was consent, there is a difference, there
6 are references to attempts of coercion. The
7 complainant attempts to allege that if they were they
8 wouldn't fall under the old policy.

9 Did I read that correctly?

10 A. Yes.

11 Q. That's your memory of the synopsis of what Beau
12 said to the hearing panel?

13 A. Yes.

14 Q. And then there's a reference to Allie coming in to
15 the hearing. And there's a reference in your notes
16 that Allie go through Brown's consent definition in
17 current policy; correct?

18 A. Yes.

19 Q. And she says, Told him that if I change my mind I
20 would express it in words. Our mutual understanding is
21 that it was platonic, no sex would occur. Brown policy
22 states that consent cannot be obtained through
23 manipulation, coercion or force. His response is that
24 we would be friends but not watch a movie. He cites a
25 series of statements where she articulates that she

1 does not want to engage in sexual interaction.

2 So Allie's referring to the definition of
3 "consent" in the Title IX Policy in her hearing
4 presentation; correct?

5 A. Correct.

6 Q. And that's, again, the same definition that you
7 had excised from the draft report that Ms. Perkins had
8 provided to you?

9 A. Correct.

10 MR. RATCLIFFE: Exhibit 25.

11 MR. RICHARD: Twenty-five may be full, your
12 Honor.

13 THE COURT: All right. Are you moving 25?

14 MR. RATCLIFFE: Yes, I am, your Honor.

15 THE COURT: Okay. Twenty-five will be full.

16 (Plaintiff's Exhibit 25 admitted in full.)

17 Q. Can you read that?

18 A. Yes.

19 Q. Show you what's been marked as Exhibit 25 and ask
20 you if you recognize that document.

21 A. Yes. It's an e-mail from Gretchen to the panel
22 thanking them for their work on the case and attaching
23 a draft of the findings and asking them for edits or
24 corrections, then she forwarded -- it looks like some
25 hours later forwarded me that e-mail.

1 Q. And you received that e-mail on April 14th, 2016?

2 A. Yes. The e-mail was sent on April 14th, 2016.

3 Q. At 6:30 p.m.?

4 A. Yes.

5 Q. And that was the same day as the hearing?

6 A. Correct.

7 Q. And there's an attachment to the e-mail?

8 A. Correct.

9 Q. And the attachment is the findings?

10 A. Is the draft that she was sharing with the panel,
11 yes.

12 Q. Now, that draft report references, does it not --
13 or draft findings letter, references the Title IX
14 Policy; correct?

15 A. I can't find the reference. Yes. Yes.

16 Q. The second --

17 A. Yes.

18 Q. Well, under "Rationale," it's the second
19 paragraph?

20 A. Yes.

21 Q. And it says, (Reading:) Because the 2014-'15 Code
22 of Student Conduct does not explicitly define
23 "consent," the panel referred to the current Sexual and
24 Gender-Based Harassment, Sexual Violence, Relationship
25 and Interpersonal Violence and Stalking Policy, which

1 codified Brown University's existing community
2 standards with respect to maintaining a, quote, safe
3 learning, living and work environment where healthy,
4 respectful consensual conduct represents a campus norm.

5 Was that in the draft findings letter?

6 A. Yes.

7 Q. So the draft findings letter clearly references
8 the Title IX Policy; correct?

9 A. Correct.

10 Q. The Title IX Policy that you had excised from
11 Djuna Perkins' initial draft investigation report;
12 correct?

13 A. Yes.

14 Q. And it's specifically, the definition of "consent"
15 that you had specifically excised from Djuna Perkins'
16 draft investigation report; correct?

17 A. Correct.

18 Q. Now, did you open the draft findings letter when
19 you received it on April 14?

20 A. I did not, I don't believe, realizing that there
21 was an attachment on that e-mail.

22 Q. So this e-mail states, does it not, (Reading:)
23 Thank you for your conscientious work on this difficult
24 case. I'm attaching a draft of the findings. Please
25 let me know if you have any additions or corrections to

1 suggest.

2 A. Right. I was understanding that to mean that she
3 was just updating me about where they were in the
4 process, but I didn't realize that the attachment was
5 on that e-mail or I certainly didn't open it if I had.
6 I get a finalized findings letter.

7 Q. So when you got that e-mail, you didn't see that
8 there was an attachment to it in the header?

9 A. Well, I would have opened this on my phone and not
10 at my desk because it was after hours so, no, I hadn't
11 seen it.

12 Q. So it's your testimony you didn't see that draft
13 findings letter on April 14 when you received the
14 e-mail?

15 A. No, I don't recall.

16 Q. You specifically recall opening it on your phone?

17 A. I would have been home at this time so that's the
18 only way I review my e-mail at night.

19 Q. My question is do you specifically recall opening
20 it on your phone?

21 A. I don't specifically remember opening it on my
22 phone.

23 Q. Okay. But you specifically recall, though, that
24 when you received the e-mail you did not open the draft
25 findings letter?

1 A. I specifically recall that, yes.

2 Q. Even though it refers to the attached findings
3 letter, the body of the e-mail itself?

4 A. Right.

5 MR. RATCLIFFE: Twenty-six.

6 MR. RICHARD: Full exhibit, your Honor.

7 THE COURT: All right. Thank you. Twenty-six
8 will be full.

9 (Plaintiff's Exhibit 26 admitted in full.)

10 Q. Showing you what's marked as Exhibit 26, do you
11 recognize that document?

12 A. Yes.

13 Q. And you wrote that document?

14 A. Yes.

15 Q. And that's a letter that you sent to Beau?

16 A. Correct.

17 Q. And what's the date of the letter?

18 A. April 15th, 2016.

19 Q. And that's the day after the hearing? The hearing
20 was on the 14th; correct?

21 A. Correct.

22 Q. And it's the day after you had received the draft
23 findings letter that you didn't open?

24 A. Right.

25 Q. And in this letter, you tell both -- you sent the

1 same letter to Allie, did you not?

2 A. I did.

3 Q. So you say to -- (Reading:) I'm writing to both
4 you and the complainant, Allie, as a follow-up to the
5 hearing held yesterday, April 14, 2016. During both
6 statements, references were made to the relevant policy
7 procedures applicable to this matter.

8 THE COURT: Use the microphone.

9 Q. Why don't you read the letter.

10 A. Read the letter?

11 Q. Yes.

12 A. It says, (Reading:) Dear Beau, I am writing to
13 both you and the complainant, Allie, as a follow-up to
14 the hearing held yesterday, April 14th, 2016. During
15 both statements, references were made to the relevant
16 policy and procedures applicable in this matter. As
17 Djuna Perkins cites in her investigation report, the
18 relevant policy the 2014-2015 Code of Student Conduct.
19 The relevant process is Brown's Complaint Process,
20 which was in effect at the time the complaint was
21 submitted. The panel was provided with the 2014-2015
22 Code of Student Conduct and instructed to review
23 Section III (Sexual Misconduct) of the listed offenses
24 when determining whether a violation of the policy
25 occurred. I've attached both documents for your

1 reference. Please let me know if you have any
2 questions. Best regards, Amanda Walsh.

3 Q. Now, you didn't tell Beau, did you, that you had
4 given Gretchen Schultz the Title IX Policy?

5 A. I did not.

6 Q. And you didn't tell Beau, did you, that you had
7 told Gretchen Schultz that the panel could consider the
8 definition of "consent" in the Title IX Policy?

9 A. I did not.

10 Q. And to your knowledge, up to this point, Beau was
11 under the impression that his conduct would be
12 governed under -- solely under the 2014-'15 Code of
13 Student Conduct?

14 A. Correct.

15 Q. Now, I believe you testified that Dr. Schultz was
16 the Chair of the Title IX panel. Is that her title,
17 Title IX Council Chair?

18 A. That's not her title at Brown, but that's her
19 title within this complaint process, yes.

20 Q. She's a French professor?

21 A. Yes.

22 Q. And she sits in on, or she's a member of all the
23 panels that hear Title IX complaints?

24 A. Yes.

25 Q. And she's a non-voting member?

1 A. Correct.

2 Q. And there is a -- your notes, which we had
3 previously referenced as Exhibit 24, references a
4 checklist that Gretchen had -- Dr. Schultz as the
5 Title IX Panel Chair went over with the hearing panel;
6 correct?

7 A. Right.

8 MR. RATCLIFFE: Exhibit 23.

9 MR. RICHARD: May be full, your Honor.

10 THE COURT: All right. Thank you. Twenty-three
11 will be full.

12 (Plaintiff's Exhibit 23 admitted in full.)

13 Q. I believe that, and you can correct me if I'm
14 wrong, that the document, the title on this document
15 was not prepared by your office. It's an actual cover
16 page of Exhibit 23; correct?

17 A. The cover page was not prepared by my office, no.

18 MR. RICHARD: Just for the record, this is a
19 cover page we prepared in discovery to segregate
20 documents.

21 THE COURT: Okay. Thank you.

22 Q. The actual checklist begins on page two of Exhibit
23 23; correct?

24 A. Correct.

25 Q. And who prepared this checklist?

1 A. I prepared the initial draft and then shared it
2 with our Title IX investigator, Jessica Katz, for
3 review and she did a series of revisions, and
4 ultimately that was submitted to Gretchen Schultz, the
5 Council Chair, for review and revisions, and I
6 finalized the draft and the final document is what
7 appears here.

8 Q. The role of the Chair, the information that you
9 got for this regarding the role of the Chair came from
10 the Title IX Complaint Process?

11 A. Correct.

12 Q. And the Chair's responsible for the administration
13 of the hearing process?

14 A. Correct.

15 Q. Including procedural matters and decisions leading
16 up to the hearing?

17 A. Correct.

18 Q. Determinations about information that would be
19 considered or not, appropriate and inappropriate lines
20 of questioning and the overall decorum of the
21 proceeding?

22 A. Correct.

23 Q. Now, you did receive a copy of the actual
24 findings, the final findings letter; correct?

25 A. Correct.

1 MR. RATCLIFFE: Twenty-eight.

2 THE COURT: Any objection?

3 MR. RICHARD: No, your Honor. I was just
4 locating it. It's fine.

5 THE COURT: Twenty-eight will be full.

6 Q. I'm showing you what's been marked as Exhibit 28
7 and ask if you recognize that document.

8 MR. RICHARD: Your Honor, this is 27.

9 MR. RATCLIFFE: Excuse me. I'm sorry.
10 Twenty-seven. Change this, please.

11 THE COURT: All right. So we're talking about
12 27. Twenty-seven will be full.

13 MR. RICHARD: Twenty-seven and 28 both can be
14 full, your Honor.

15 THE COURT: That's fine. Both are full.

16 (Plaintiff's Exhibits 27 and 28 admitted in
17 full.)

18 Q. Show you what's been marked as Exhibit 27, do you
19 recognize that?

20 A. Yes.

21 Q. And we just reviewed the draft findings letter
22 that Dr. Schultz sent on the 14th. This exhibit is
23 basically that same letter in final form, is it not?

24 A. I haven't compared them to know if there are
25 changes but this is the final findings letter, yes.

1 Q. Well, we had reviewed the rationale in the draft
2 findings letter, the same rationale specifically with
3 respect to what we read regarding the reference to the
4 consent definition in the Title IX Policy; correct?

5 A. Correct.

6 Q. Now, there is a quote in that document referring
7 to the Title IX Policy; correct?

8 A. Correct.

9 Q. And the reference that Dr. Schultz is referencing
10 in her letter, which you just read, is the Statement of
11 Purpose on page one of the Title IX Policy; correct?

12 A. Correct.

13 Q. And the statement of purpose says that Brown
14 University is committed to establishing and maintaining
15 a safe learning, living and working environment where
16 healthy, respectful and consensual conduct represents
17 the campus norm; correct?

18 A. Correct.

19 Q. There's nothing in the complaint process that
20 indicates, does it, that the Title IX Policy codified
21 Brown University's existing community standard with
22 respect to maintaining a safe learning, living and
23 working environment where healthy, respectful and
24 consensual conduct represents campus norms?

25 A. In the complaint process, you said?

1 Q. In the complaint process.

2 A. No, it doesn't say that.

3 Q. And the panel had, the Title IX panel that heard
4 Beau's case had nothing before them to indicate that
5 the definition of "consent" in the Title IX Policy
6 codified Brown University's existing community
7 standards?

8 A. No, they did not.

9 Q. And so that was information that Dr. Schultz
10 provided to the panel that was outside of the four
11 corners of the investigation report; correct?

12 A. By drafting it in this letter? I guess I'm
13 confused by your question.

14 Q. She drafted the letter but the panel had to agree
15 to it; correct?

16 A. The panel had to determine how they would view
17 consent, yes.

18 Q. And she sent the draft letter to the panel?

19 A. Yes.

20 Q. And the panel concurred that this letter
21 accurately reflected our deliberations and findings?

22 A. Correct.

23 Q. And the panel found, did it not, that -- made a
24 determination that they were going to use the
25 definition of "consent" in the Title IX Policy?

1 A. Correct.

2 Q. And the rationale for using that was that it
3 codified existing community standards, or it
4 codified -- again, there, because the 2014-'15 Code of
5 Student Conduct does not explicitly define "consent,"
6 the panel referred to the current Sexual and
7 Gender-Based Harassment, Sexual Violence, Relationship
8 and Interpersonal Violence and Stalking Policy, which
9 codified --

10 THE COURT: You're a little close to the
11 microphone.

12 MR. RATCLIFFE: Excuse me, your Honor.

13 Q. -- which codified Brown University's existing
14 community standard.

15 A. Well, it doesn't specifically say that that was
16 their rationale in deciding whether to use that, but
17 yes, you are reading -- it does say here that she's
18 writing, "Which codified Brown University's current
19 existing community standards."

20 Q. Well, you weren't present at the deliberations?

21 A. I was not.

22 Q. And all as you know is that the panel was told
23 they could consider the definition of "consent" in the
24 Title IX Policy.

25 A. My understanding is that they were told that was

1 one of the definitions that they could consider.

2 Q. Well, you were there when they were told that?

3 A. Are you referring to the section where Gretchen
4 Schultz read the definition of "consent" at the start
5 of the hearing?

6 Q. Yes.

7 A. Yes. And I believe she said something, it might
8 be helpful in thinking about how --

9 Q. They could consider but weren't required to use
10 this definition?

11 A. Yes.

12 Q. But in any event, they decided to use the
13 definition?

14 A. Yes, they did.

15 Q. And the rationale for using that definition was
16 that it codified existing community standards?

17 A. Like I said, I'm not certain that that was their
18 rationale in deciding that.

19 Q. In any event, that's what the letter says;
20 correct?

21 A. The letter says, "Which codified Brown
22 University's existing community standards," yes.

23 Q. There was nothing before the panel in any of the
24 documents that established that the current definition
25 of "consent" in the 2015-'16 Title IX Policy codified

1 Brown University's existing community standards with
2 respect to consent?

3 A. There was not.

4 Q. And I'm showing you Exhibit 3, Title IX Complaint
5 Process. If you look at the language starting here, it
6 states, does it not, "The Chair has complete discretion
7 to approve or deny the request." If you start there
8 and go at the top.

9 It says in this complaint process, does it not,
10 or the hearing panel, that the presumption is that the
11 investigator has identified and interviewed all
12 relevant witnesses and supplied all information
13 necessary for the hearing panel to render its decision
14 and determine sanctions; correct?

15 A. It doesn't say "supplied all information." It
16 says, "Supplied the information that is necessary,"
17 yes.

18 Q. (Reading:) Has identified and interviewed all
19 relevant witnesses and supplied the information
20 necessary for the hearing panel to render its decision
21 and determine a sanction.

22 A. Right.

23 Q. And in this case, Gretchen Schultz, as the Chair,
24 added additional information -- strike that -- provided
25 additional information to the hearing panel regarding

1 the codification, the current "consent" definition in
2 the Title IX Policy codifying existing Brown University
3 community standards.

4 A. Well, the panel does consider other documents.
5 This is in reference to the factual information. So
6 they all consider the complaint process and the
7 relevant policy.

8 Q. The relevant policy was the 2014-'15 Code of
9 Student Conduct?

10 A. Correct.

11 Q. And in fact, to anybody looking at Beau or Allie
12 looking at Djuna's report wouldn't draw an inference in
13 any way that the panel would consider the 2015-'16
14 definition of "consent" in the Title IX Policy?

15 MR. RICHARD: Objection, your Honor. Calls for
16 speculation by two people he referenced in his
17 question.

18 THE COURT: I'm going to sustain the objection.
19 Why don't you try to reask the question.

20 Q. Was there anything in Djuna Perkins' investigative
21 report which would have led Beau to believe that the
22 Title IX panel hearing his case would be considering
23 the definition of "consent" contained in the 2015-'16
24 policy?

25 A. No.

1 MR. RATCLIFFE: Twenty-eight. This is 28.

2 Q. I'm showing you what's been marked as Exhibit 28.
3 Do you recognize that document?

4 A. Yes.

5 Q. And that was a letter that you sent to Beau
6 regarding the panel decision?

7 A. Yes.

8 Q. And as a result of the panel decision, Beau was
9 suspended from Brown University until the fall of 2018;
10 correct?

11 A. Correct.

12 Q. And at the time this letter was sent, do you
13 recall what year Beau was at Brown University?

14 A. I believe that he just finished his junior year.

15 Q. So he would have had one year left. He would be
16 graduating next spring in 2017; correct?

17 A. Correct.

18 Q. So now he at a minimum has to wait until the fall
19 of 2018 to matriculate at Brown; correct?

20 A. Correct.

21 Q. And he's not guaranteed that he'll be able to
22 matriculate at Brown in the fall of 2018 semester;
23 correct?

24 A. Correct.

25 Q. He basically has to reapply?

1 A. So that's actually handled by the Office of
2 Student Life.

3 Q. But in any event, he can't go back on campus, do
4 anything, can't come on Brown University campus, can't
5 do anything until he's readmitted to Brown University?

6 A. Correct.

7 Q. Now, there was an appeal in this case?

8 THE COURT: Why don't we take a break before you
9 get into the appeal. So we'll take our afternoon
10 break, about ten minutes. Thank you.

11 (Recess.)

12 THE COURT: Okay. You may proceed,
13 Mr. Ratcliffe.

14 Q. Now, both the complainant and the respondent filed
15 appeals in this case?

16 A. Correct.

17 Q. The complainant appealed the sanction?

18 A. Correct.

19 Q. She wanted Beau dismissed from the University;
20 correct?

21 A. I believe so. Yes. I believe so, yes.

22 Q. And Beau filed an appeal claiming one of the
23 grounds was procedural error?

24 A. Correct.

25 Q. Do you recall what the other grounds were? I can

1 show you.

2 MR. RATCLIFFE: Why don't I mark both of the
3 appeals as exhibits.

4 MR. RICHARD: It's 29 and 30, your Honor. They
5 may be full.

6 THE COURT: All right. Twenty-nine and 30 will
7 be full without objection.

8 (Plaintiff's Exhibits 29 and 30 admitted in
9 full.)

10 Q. Show you what's been marked as Exhibit 29. Do you
11 recognize that document?

12 A. Yes. It looks like Allie's appeal.

13 Q. And 30?

14 A. Is Beau's appeal.

15 Q. And one of the bases of Beau's appeal was the
16 definition of "consent" in the -- or the Title IX panel
17 referring to the definition of "consent" in the
18 2015-'16 Title IX Policy; correct?

19 A. Correct.

20 Q. So basically, Beau was contending that there was
21 error for the Title IX hearing panel to include a
22 definition of "consent" that didn't exist or the
23 definition of "consent" that was not included in the
24 2014-'15 Code of Student Conduct; correct?

25 A. Correct.

1 Q. Now, he also alleged the same reference, back to
2 the conclusion of the character evidence; correct? In
3 his objection to Djuna Perkins' report, he referenced
4 the character evidence on pages 27 and 28 of the
5 report; correct?

6 A. Correct.

7 Q. Now, after the appeals were filed -- the appeals
8 were filed on April 25th, 2016? At least Beau's was;
9 correct?

10 A. That's the date, yes.

11 Q. You wrote a letter to Gretchen Schultz?

12 A. Yes.

13 MR. RATCLIFFE: Thirty-one.

14 MR. RICHARD: Full.

15 THE COURT: Thirty-one will be full without
16 objection.

17 (Plaintiff's Exhibit 31 admitted in full.)

18 Q. Exhibit 31, do you recognize that document?

19 A. I do.

20 Q. What is that document?

21 A. It's a letter from me to Gretchen Schultz.

22 Q. And as a result of sending that letter, Gretchen
23 Schultz asked for a meeting with you?

24 A. Correct.

25 Q. And you had a meeting with Gretchen Schultz

1 regarding the substance of that letter?

2 A. Actually, my memory of the meeting was that it was
3 not about the substance of this letter so much as it
4 was about the appeals process generally because this
5 was the first appeal heard under the new complaint
6 process.

7 Q. And in fact, the checklist for -- you had
8 identified Exhibit 23, I believe, the checklist for the
9 hearing panels; correct?

10 A. Yes.

11 Q. And at the time that the appeal was filed, a
12 checklist hadn't even been prepared for the appeals
13 panel; correct?

14 A. Correct.

15 Q. In fact, you had left for maternity leave by the
16 time the checklist for the appeals panel was prepared;
17 is that right?

18 A. I don't know the date that the checklist for the
19 appeals panel was prepared, but I did go out on
20 maternity leave within -- I don't see the date on this
21 letter, but within -- it was the end of this week, the
22 Friday of this week.

23 Q. The date of this letter is April 28th?

24 A. And I believe my last day on campus was April
25 29th.

1 MR. RATCLIFFE: Exhibits 32 and 33.

2 MR. RICHARD: Full.

3 THE COURT: Thirty-two and 33 will be full
4 without objection.

5 (Plaintiff's Exhibits 32 and 33 admitted in
6 full.)

7 Q. And Beau's response to Allie's appeal is dated
8 April 29th; correct?

9 A. Correct.

10 Q. And Allie's response to Beau's appeal is dated the
11 same day; correct?

12 A. Correct.

13 Q. And in Allie's response to Beau's appeal, it
14 states, does it not, that under the -- go to the second
15 paragraph on page four of her response, (Reading:)
16 Under the 2014-'15 Code of Student Conduct, sexual
17 misconduct is committed, quote, "Against a person's
18 will," unquote. The evidence relied upon and reason
19 given by the Title IX Council for its decision support
20 that Beau committed such misconduct against my will.

21 Correct?

22 A. Yes. It states that.

23 Q. And you've read the 2014-'15 Code of Student
24 Conduct?

25 A. Correct.

1 Q. And is there anything in the 2014-'15 Code of
2 Student Conduct where it states specifically, as Allie
3 had in this document, that sexual misconduct is
4 committed, quote, "against a person's will"?

5 A. I do not believe so, no.

6 Q. Do you want to check?

7 A. I can take a look.

8 (Witness reads document.)

9 A. No, I don't see it quoted there, or the
10 information that was in the quotations.

11 MR. RATCLIFFE: Exhibit 34.

12 MR. RICHARD: I'll stipulate to both 34 and 35,
13 your Honor.

14 THE COURT: All right. Both 34 and 35 will be
15 full.

16 (Plaintiff's Exhibits 34 and 35 admitted in
17 full.)

18 Q. I know that you were on maternity leave at the
19 time but, subsequent to your maternity leave, did you
20 come to learn that Beau had attempted to file a
21 surreply addressing the quote that Allie referenced in
22 her objection to his appeal?

23 A. I actually haven't returned from maternity leave
24 so I'm still -- I'm on maternity leave.

25 Q. I apologize. Have you come to learn that Beau

1 attempted to file a surreply?

2 A. I do know that. I believe that I learned really
3 of it mostly from my deposition.

4 Q. In any event, I believe at your deposition you
5 reviewed this surreply. That's the surreply, to your
6 knowledge, that Beau filed; correct?

7 A. Yes.

8 Q. And he was addressing the double quote referred by
9 Allie to the part of the Code that was, the 2014-'15
10 Code that was not -- strike that.

11 He was referring to Allie's misstatement of the
12 2014-'15 Code; correct?

13 A. Correct.

14 Q. And who is Jessica Katz?

15 A. Jessica Katz is Brown's Title IX investigator.

16 MR. RATCLIFFE: Thirty-five.

17 MR. RICHARD: I stipulated already to 35, I
18 believe.

19 Q. And you're aware that, are you not, that Jessica
20 Katz -- she was acting in your stead, or she is acting
21 in your stead while you're on maternity leave; correct?

22 A. Correct.

23 Q. And Jessica Katz sent a response to Beau that
24 surreplies are not -- the complaint process does not
25 allow for surreplies; correct?

1 A. I don't believe I've seen this e-mail before but,
2 yes, it looks like she's saying that the complaint
3 process does not allow for surreplies.

4 Q. And to your knowledge, the complaint process does
5 not forbid surreplies, does it?

6 A. It is silent as to surreplies.

7 Q. It's silent on surreplies; correct?

8 A. Yes.

9 Q. And I believe it was your testimony at your
10 deposition that if someone misstates something in -- a
11 respondent or a complainant misstates something in a
12 document that that should be brought to the attention
13 of the panel that's hearing the matter; correct?

14 A. If it's a misstatement -- I would have to review
15 the documents to say about a specific case. But if the
16 misstatement was material, then I would address it,
17 yes.

18 Q. Do you view misquoting language of the policy as a
19 material misstatement?

20 A. Well, in this case, I assume the appeals panel
21 also had the '14-'15 Code in front of them, too. So
22 they would have the ability to look at that section.
23 But again, without reading both documents fully, which
24 I have not done, I really can't say.

25 MR. RATCLIFFE: Thirty-six.

1 MR. RICHARD: May come in as full.

2 THE COURT: Thirty-six will be full without
3 objection.

4 (Plaintiff's Exhibit 36 admitted in full.)

5 Q. Have you seen Exhibit 36?

6 A. I have not.

7 Q. Now, this is a full exhibit. Now, we can review
8 the findings. Your understanding is that Beau was
9 claiming a series of errors that occurred at his
10 hearing; correct?

11 A. It seems like based on the letter that you just
12 showed me that it was some related to the investigation
13 report and some related to the consent issue.

14 MR. RICHARD: Your Honor, I would just object.
15 The document speaks for itself. This witness was on
16 maternity leave.

17 THE COURT: Right.

18 MR. RATCLIFFE: She is still the program -- I'm
19 going to ask her a couple of questions about some of
20 the representations in the letter.

21 THE COURT: Well, you can ask her -- I think she
22 said she hadn't seen this letter.

23 MR. RATCLIFFE: Why don't you review the letter.

24 THE COURT: Have you seen this letter before?

25 THE WITNESS: No.

1 THE COURT: All right. I think before she can
2 talk about it she needs to review it.

3 (Witness reads document.)

4 THE COURT: Counsel, the microphones are picking
5 up your whispering. So you might want to mute them if
6 you're consulting with each other.

7 MR. RICHARD: It really wasn't consulting.

8 THE COURT: Whatever. If you're talking about
9 dinner or whatever it is, you should just mute them.

10 Q. You've had a chance to review the letter?

11 A. Yes.

12 Q. Okay. One of the issues that the panel addressed
13 on Section III was deficiencies regarding the
14 investigator's report being substantial prejudicial
15 error. You saw that?

16 A. Yes.

17 Q. And the Section (b), III(b) refers to the
18 character evidence that we addressed; correct?

19 A. Correct.

20 Q. And the appeal on that ground was denied and the
21 appeals panel did not find inclusion of this passage
22 constituted a substantial procedural error that
23 materially affected the outcome of the hearing.

24 It goes on to state, (Reading:) The appeals
25 panel noted, moreover, that Title IX Council panels are

1 instructed to consider only relevant information and
2 disregard prejudicial character evidence.

3 Correct?

4 A. Correct.

5 Q. Now, the checklist that Gretchen reads to the
6 hearing actually says something a little bit different,
7 doesn't it? Under Section (b) where we have role of
8 the panel members, do you see that there?

9 A. Yes.

10 Q. This is something that you drafted?

11 A. Yes.

12 Q. And actually, when Gretchen reads through her
13 checklist to the panel, she tells them that only
14 information that has been deemed relevant is included
15 in the investigation report; correct?

16 A. Correct.

17 MR. RATCLIFFE: Exhibit 37.

18 MR. RICHARD: May be full.

19 THE COURT: Thirty-seven will be full without
20 objection.

21 (Plaintiff's Exhibit 37 admitted in full.)

22 Q. I note that you didn't sign this extension,
23 extension authorization form, but is that the form that
24 the Title IX Office used when someone is found
25 responsible of the violation of either the Title IX

1 Policy or the Code of Student Conduct?

2 A. Yes.

3 Q. And that's what was issued to Beau in this case?

4 A. Yes. Or I assume so. Yes, it looks like it was.

5 Q. It's the same form?

6 A. Yes.

7 Q. And that's something that you then send to the --
8 where does that form go?

9 A. There's a few people that it goes to, but
10 including the Office of Student Life and Registrar
11 Office to indicate that a student has been suspended or
12 expelled.

13 Q. Okay. And are you aware of how his record is
14 noted, how his transcript is noted, that his transcript
15 remarks suspended for disciplinary reasons will show on
16 his transcript if he requests a transcript, for
17 example, to go to law school?

18 A. Yes.

19 Q. So it will show that he went to Brown starting in
20 2013 through 2016, and then it will say "suspended for
21 disciplinary reasons"?

22 A. Yes.

23 Q. And if he's let back in, he can then complete his
24 education, but when he applies to law school or any
25 graduate school it will show that for the two years he

1 was suspended for disciplinary reasons between 2016 --
2 May of 2016 and September of 2018?

3 A. I'm not certain. That would be something that
4 falls within the registrar how it would appear.

5 Q. But in any event, it's your understanding that
6 there's a transcript, it says on the form and that
7 there's a transcript remark?

8 A. At this time, yes.

9 MR. RATCLIFFE: May I have a moment, your Honor?

10 THE COURT: Yes.

11 (Pause.)

12 MR. RATCLIFFE: Just a matter of housekeeping
13 just so that -- I believe we agree that the 2013-'14
14 Code of Student Conduct would be admitted as a full
15 exhibit. That was the Code of Student Conduct that was
16 in existence when Beau was a freshman.

17 MR. RICHARD: Exhibit 1, your Honor, yes.

18 THE COURT: Exhibit 1?

19 MR. RICHARD: Yes.

20 THE COURT: All right. That will be full.

21 (Plaintiff's Exhibit 1 admitted in full.)

22 MR. RATCLIFFE: I have nothing further of this
23 witness at this time. I pulled a couple of exhibits
24 out. I'm just so going to put them back so Mr. Richard
25 will be able to find them quickly. Just take me about

1 two minutes.

2 THE COURT: Let's go off the record for a
3 minute.

4 (Discussion off the record.)

5 **CROSS-EXAMINATION BY MR. RICHARD**

6 Q. Good afternoon, Ms. Walsh. Just briefly, I'd like
7 to ask you a few questions about your background.

8 Can you tell us your educational background,
9 please.

10 A. I went to Northeastern University and graduated
11 with a bachelor of science degree, and then went on to
12 Roger Williams School of Law and graduated in 2011.

13 Q. Did you go from undergraduate straight to law
14 school?

15 A. No. I worked in Portland, Oregon at an
16 educational non-profit in the interim from -- I left
17 Northeastern around January 2007, and I began law
18 school in the fall of 2009.

19 Q. What did you do after graduation from law school?

20 A. I went on to work at the Victim Rights Law Center,
21 which is a non-profit based in Boston that represents
22 individuals who have been raped or sexually assaulted.

23 Q. How long did you stay at that position?

24 A. I stayed there from approximately August of 2011
25 through April of 2015.

1 Q. And in April of 2015, you came to Brown?

2 A. Yes.

3 Q. What is your background in Title IX?

4 A. When I was at the Victim Rights Law Center, I
5 represented individuals in student conduct, student
6 disciplinary proceedings. They were often complainants
7 but sometimes they were respondents in a particular
8 matter. And I also consulted for the Department of
9 Justice for different universities that were campus
10 grantees.

11 So the University had received a grant
12 effectively to handle specifically cases involving
13 sexual and gender-based violence, and there was a list
14 of approved consultants effectively, and I was part of
15 that.

16 Q. Did you do any Title IX training?

17 A. So I presented at a lot of different conferences,
18 both directly through my organization but also again
19 through the Department of Justice, Office on Violence
20 Against Women in conjunction with the Clery Center,
21 which is based in Philadelphia. So I presented at many
22 conferences.

23 Q. What led you to apply for the position at Brown?

24 A. That I was often consulting with universities on
25 helping them draft policies and processes but wasn't

1 able to fully implement those, then I would leave and
2 leave it to the university to continue that function.
3 And so I was looking for a change to be able to see the
4 process through and to be able to execute the policies
5 and processes that I had helped to draft.

6 Q. Was the position for which you applied the
7 Title IX Program Officer?

8 A. Yes.

9 Q. Is that a new position at Brown?

10 A. Yes.

11 Q. Was there a selection committee in the hiring
12 process?

13 A. There was an extensive selection process.

14 Q. Do you know what led to the creation of this
15 position at Brown?

16 A. Yes.

17 MR. RATCLIFFE: Objection, your Honor. I
18 believe that she wasn't at Brown when the position --

19 THE COURT: First of all, it's background. And
20 if you want Mr. Richard to lay a better foundation for
21 her personal knowledge, he can do that, but I don't
22 think that's really necessary.

23 MR. RATCLIFFE: That's fine. I'll withdraw the
24 objection.

25 A. My understanding is that the Sexual Assault Task

1 Force was formed in the 2014-2015 academic year, and it
2 was in response to a few high-profile cases. That
3 group convened and came out with two reports. One was
4 in December of 2014, and the second was in April of
5 2015 and that laid out a series of both some historical
6 context at Brown and globally and then also some
7 recommendations for how the University would proceed
8 moving forward.

9 Some members were duplicative of who also
10 participated in my selection process. But when I
11 visited campus, I did meet with a lot of members of the
12 Sexual Assault Task Force.

13 Q. You were hired in May of 2015?

14 A. I believe that I began in May of 2015. I believe
15 I was hired in March of 2015 and the announcement was
16 made in April of 2015.

17 Q. To whom do you report?

18 A. I report to Liza Cariaga-L0, who is the
19 Vice-President for Diversity and Inclusion.

20 Q. Is the Title IX Office a new office at Brown?

21 A. Yes. It basically existed -- effectively, it came
22 into existence when I began at Brown but really was
23 fully functioning when the new process and policy were
24 implemented in September of 2015.

25 Q. What are the program officer's responsibilities?

1 A. I oversee all of the Title IX Policy, so any
2 claims by students, faculty or staff that involve
3 allegations of sexual or gender-based harassment,
4 stalking, sexual violence or interpersonal violence.
5 So if they needed resources, remedial measures, et
6 cetera; if they wanted to submit a complaint. Some
7 want to report to Brown DPS or local law enforcement so
8 I would provide them with information and connect them
9 with the necessary resources to achieve whatever
10 resources they were looking for.

11 Q. Do you work with the Office of Student Life?

12 A. Yes. Very often as it relates to cases involving
13 student respondents or student complainants.

14 Q. What role, if any, does the Office of Student Life
15 have in the process relating to student complaints?

16 A. I work with the Office of Student Life largely in
17 two respects. One is that the Office of Student Life
18 implements -- they execute all campus-issued no-contact
19 orders and many of the complainants and respondents in
20 the Title IX cases are seeking no-contact orders. And
21 I collaborate with them to both request a no-contact
22 order on behalf of the student or to give them a
23 heads-up that one will be requested. They also enforce
24 violations of no-contact orders.

25 The second way I work with them heavily is with

1 student support, which are deemed -- who can be helpful
2 when students are needing academic or support,
3 accommodations, extensions, other sorts of things. And
4 they work with students who are going through a whole
5 series of challenges, but one of them would be acting
6 as a complainant or a respondent in a case like this.

7 Q. As far as Title IX issues at Brown, is there any
8 type of oversight boards?

9 A. Yes. So in addition to reporting to Liza
10 Cariaga-Lo, the President also formed a Title IX
11 Oversight and Advisory Board, which is Chaired by
12 Michele Cyr, who is also the Chair of the Sexual
13 Assault Task Force. The goal was to create some
14 continuity between the two.

15 The Oversight and Advisory Board is made up of
16 faculty members, staff members, very senior
17 administrators. It includes three vice-presidents, and
18 then representation from undergraduate, graduate and
19 medical students.

20 Q. Was this Board formed this past academic year?

21 A. Yes. It was formed -- it was included in the task
22 force report but fully formed in the fall of 2015 and
23 met monthly throughout this academic year.

24 Q. Showing you what's previously been marked and
25 admitted as Exhibit 4, it's called the Title IX Policy?

1 A. Yes.

2 Q. When did that come into effect?

3 A. September of 2015.

4 Q. Who approved it?

5 A. It was initially drafted -- an initial draft was
6 created by the Sexual Assault Task Force and attached
7 to the final report as Appendix A. It was then
8 subsequently revised by a whole series of people. I
9 weighed in on it. It was revised by a law firm in
10 Boston, Holland and Knight were retained to do a review
11 of it, and then was fully implemented after all
12 policies and processes are finalized by Brown's
13 corporation.

14 Q. When did the complaint process come about?

15 A. The complaint process as we're referring to it
16 today for cases involving student respondents went
17 through a similar process and was implemented on the
18 same timeline in September of 2015.

19 Q. Who drafted the complaint process?

20 A. I drafted the complaint process in its current
21 form. I pulled the information heavily from the final
22 report of the Sexual Assault Task Force, but it was --
23 the information about how complaints would be handled
24 was contained in the final report, but it wasn't a
25 stand-alone document until I drafted it.

1 Q. Focusing on page nine of the Title IX Policy,
2 specifically Section 10 or X, Resources Reporting,
3 Filing a Complaint, can you summarize for the Court the
4 resources that Brown provides under this Title IX
5 Policy?

6 A. Sure. So for students who are seeking resources,
7 there's a whole host of offices at Brown that can help
8 them. We direct students to confidential resources
9 like the chaplain's office, counseling and psych
10 services, which on campus is referred to as CAPS. The
11 SHARE advocates, which are located in Health Services
12 and then, of course, Health Services as confidential
13 resources.

14 Students also get various support roles. For
15 example, students are assigned academic deans if they
16 need support throughout an investigation. They also
17 utilize student support, which is part of the Office of
18 Student Life. They can seek help from DPS. There's an
19 advocate in DPS that does support safety planning,
20 things like that. And then, of course, they come to
21 the Title IX Office to gather information about the
22 process or to sometimes request a fear remedial measure
23 like a no-contact order, an escort, a housing transfer,
24 et cetera.

25 Q. Were any resources offered to Beau?

1 A. Yes. Beau was assigned an academic dean just as
2 all complainants and respondents involved complaints
3 that allege sexual assault are. He was also in contact
4 with a student support dean, Dean Maria Suarez,
5 throughout this and --

6 MR. RATCLIFFE: I'm going to object to this.
7 There's no foundation for that, and I don't know the
8 basis of knowledge as to her representation that she
9 was in contact with Dean Maria Suarez regarding various
10 matters.

11 THE COURT: All right. That's fine. Why don't
12 you lay a better foundation.

13 Q. You testified that there were resources offered to
14 Beau?

15 A. Yes.

16 Q. Did you offer any resources to Beau?

17 A. Yes. Contained in the letter that I provided to
18 him, I believe on November 2nd, summarizing our
19 conversation, I let him know about available resources.
20 Specifically I remember that it made reference to
21 counseling and psych services, which is CAPS. I am the
22 person who assigns the academic deans. And in this
23 case, I was the person who notified him that he had an
24 academic dean.

25 There were other requests for accommodations.

1 For example, he had mock trial -- I believe a mock
2 trial engagement around the time the complaint was
3 submitted and asked for an extension to submit his
4 response statement, which was granted. And he asked
5 for other academic extensions.

6 **Q.** Now, the Title IX Policy under the resource
7 recording complaint references resources offered
8 whether as complainant or respondent. Is there a
9 difference between the types of resources that are
10 offered to complainants or respondents?

11 **A.** From the Title IX Office the resources are exactly
12 the same that I offer to both parties. The only
13 distinction on campus would be that our SHARE advocates
14 largely work with or are there. There are sexual
15 harassment and assault resource education advocates,
16 and they work with students who are often in the role
17 of the complainant.

18 **Q.** This section also deals with reporting. What is
19 it specifically that the Title IX Office does as to the
20 reporting of complaints?

21 **A.** "Reporting" is really a global term that can refer
22 to reporting to the Title IX Office to share
23 information. It doesn't necessarily mean a student
24 wants to go through submitting a complaint. It can
25 also refer to reporting to DPS or Providence Police.

1 The Title IX Office will help support those goals if a
2 student wants to do that.

3 Q. Page 11 of the complaint, Section (b), Timeframe
4 for Reporting. Is there a timeframe by which a
5 complaint must be received by Brown?

6 A. No, there is not.

7 Q. And the policy also refers in Section (e) to
8 Remedial Protective Measures. What are they?

9 A. Again, some -- when we think about remedial
10 measures, we often think about addressing safety,
11 well-being, could be academic, et cetera. So to remedy
12 things that have been impacted as a result of an
13 investigation. Safety measures are often things like a
14 request for a housing transfer or a request for a
15 no-contact order.

16 Q. How many people work in the Title IX Office?

17 A. There are -- really in the Title IX Office alone
18 there are two full-time employees. The Title IX
19 Program Officer, which is my role; and the Title IX
20 investigator, which is Jessica Katz's role.

21 Q. Page 11 going onto 12 speaks of applicable
22 procedures under this policy. What does that
23 reference?

24 A. Again, this delineates the conduct that is
25 expected, the Code of Conduct, the community standards

1 that are expected at Brown and then the accompanying
2 procedures would be how -- if a complaint was
3 submitted, how an investigation and adjudication would
4 be handled, and there were three sets of complaint
5 procedures at Brown, one that relates to student
6 respondents.

7 Q. That's the complaint process that you discussed
8 today?

9 A. Yes.

10 Q. What is the Title IX Council?

11 A. The Title IX Council is the body of people that
12 include undergraduates, graduate students, medical
13 students, faculty and staff. And their role is to
14 serve as panelists, to be the decision-makers of cases
15 that involve sexual and gender-based harassment,
16 stalking, interpersonal violence or sexual violence.

17 Q. Why are students on the panel?

18 A. It has long been the culture at Brown that
19 students demand to be on these panels, and they have
20 been very successful members of these panels predating
21 my time at Brown.

22 MR. RATCLIFFE: Objection. Move to strike.

23 THE COURT: Sustained.

24 Q. How are they selected, the students?

25 A. Students are selected through committee processes.

1 So for example, for undergraduate students there's
2 something called UCS, the Undergraduate Council of
3 Students. In order to have students sitting on
4 committees at Brown, there is a process for that and
5 that process is dictated by UCS. So you submit to UCS
6 the students that you need and the function that they
7 will serve and they effectively interview, vet and
8 assign the students to your panel.

9 It's a similar process for graduate students,
10 which is GSC, the Graduate Student Council. And for
11 medical students it's the med student senate goes
12 through a similar process.

13 So you indicate how many students you need, and
14 they assign the students.

15 Q. What role do you have in the student selection
16 process?

17 A. I have as much of a role as the student selection
18 process permits me to have. So my understanding is
19 that most administrators don't have a role but
20 understanding that this was an incredibly important
21 function and also a new process, I met with the student
22 who was the UCS president for the '15-'16 year to my
23 recollection twice last summer to discuss, again, the
24 function of the Title IX Council, the role of the
25 students, and what I was hoping those students would be

1 able -- how I wanted those students to be vetted in
2 order for them to be successful members of the Title IX
3 Council.

4 Q. You say how you want students vetted, what do you
5 mean by that?

6 A. In recent years, there has been a lot of --

7 MR. RATCLIFFE: I'm going to object. Not
8 responsive.

9 Q. What are the --

10 THE COURT: Let me rule on the objection.
11 Overruled. I don't know if it's responsive yet. She
12 hardly said anything.

13 So you asked her what you meant by vetting. So
14 let's hear her answer to that.

15 A. What I mean by vetting is that there were
16 particular questions I was hoping that the UCS process
17 would ask of students who were interested in these
18 positions. Specifically, I remember specifically
19 stating I didn't want to have --

20 MR. RATCLIFFE: Objection.

21 THE COURT: I think you answered the question.
22 Mr. Richard may follow-up.

23 Q. Were you focusing on male or female members?

24 A. I was not. I was focusing on the ideas they had
25 around issues related to Title IX. I was hoping to not

1 have any activists or have any students who expressed
2 that universities shouldn't be addressing these cases.
3 I was seeking students who could be objective and
4 open-minded.

5 Q. Have you taken any steps to have male students
6 serve on the Title IX Council?

7 A. When I met with the UCS president, I asked to get
8 a representative group --

9 MR. RATCLIFFE: Objection.

10 THE COURT: What's the objection?

11 MR. RATCLIFFE: I don't believe it's responsive.
12 He said have you taken any steps to ensure males on the
13 process, and then she starts talking about meeting with
14 the UCS president.

15 THE COURT: Well, I understand your concern, but
16 I'm going to overrule the objection because I think
17 she's just leading up to her substantive answer.

18 So go ahead. You may answer.

19 A. When I met with the UCS president, I had asked him
20 to provide as close as he could a representative group
21 from the six slots that he was seeking, including as
22 gender equality. So I would have ideally liked to have
23 three males and three females.

24 Q. What about the non-student members, how are they
25 selected?

1 A. When I came to Brown, I began the selection
2 process by meeting with people who had worked in
3 Student Life, and they identified Student Conduct Board
4 members who had served a similar function on the
5 Student Conduct Board panel in the past. And I asked
6 them more questions, looking for people who had
7 approached these cases fairly, had found both favorably
8 towards complaints and had, you know, responsible or
9 not responsible. I wanted people who had had a
10 balanced approach to these cases in the past. And then
11 I would meet with them. I would discuss the new role
12 of the Title IX Council, how it was different from the
13 Student Conduct Board and engage with them to see
14 whether I thought it was a good fit.

15 And I continued to ask for various
16 recommendations, again trying to seek a representative
17 group of faculty and staff.

18 Q. When did this selection process occur?

19 A. I began meeting with people throughout all of last
20 summer immediately when I came to Brown in anticipation
21 of the complaint process and the policy being
22 implemented in September, but it went on a rolling
23 basis into the early part of the fall 2015 semester.

24 Q. When was the first Title IX Council convened?

25 A. I believe the first panel was convened in the

1 first days in February of 2016.

2 Q. Prior to membership of the panel, I believe you
3 testified there were 18 or 20 members?

4 A. Approximately.

5 Q. How many are male?

6 A. Three.

7 Q. How many are female?

8 A. The remaining. Approximately 15 to 17. I can't
9 remember exactly how many were serving last year.

10 Q. In Beau's case, did you consider males on the
11 Title IX Council panel?

12 A. Yes. I tried to put males on the panel that was
13 hearing Beau's -- the complaints that involved Beau.

14 Q. Who were they?

15 A. There were two students and one staff member, and
16 all had conflicts in this case and weren't able to
17 serve.

18 Q. Were there other males who could have served?

19 A. There were not. We had recruited additional
20 males, but they were not fully trained to hear cases at
21 that point.

22 Q. Is there any training provided to the Title IX
23 Council members?

24 A. Yes. We say that there's a five-hour training
25 requirement, but it actually ends up to be a bit more

1 than that.

2 **Q.** What does that training entail?

3 **A.** The first two hours of the training -- the first
4 hour of the training is an overview of Title IX
5 generally, helping the -- making sure the council is
6 all on the same page regarding what Title IX is, why it
7 applies to these cases, and why Brown addresses these
8 cases at all.

9 The second hour involves what their function is
10 in our specific complaint process. There's two
11 additional hours that almost all of the council members
12 did as well. One involved an extensive review of how
13 appeals will be handled, and another is effectively a
14 mock panel hearing so that we can see how it runs, and
15 we divided the Title IX Council into panels of three or
16 as close to three as we could and heard a mock case.
17 And then there were other hours that were offered that
18 were not facilitated by me but were facilitated by
19 other administrators at Brown.

20 **Q.** What were the topics of the other presentations?

21 **A.** One was something that Mark Peters, our Men's
22 Health Coordinator, put on that involved masculinity.
23 He gave a lot of background information on
24 socialization of males and kind of societal norms and
25 expectations of males.

1 And the other training was facilitated by Alana
2 Sacks, who is one of Brown's Chair advocates, and she
3 talked about effectively the impacts of trauma on
4 people, on victims.

5 **Q.** How is it that the topic is selected for the
6 subject session?

7 **A.** The training facilitated by Alana Sacks was
8 effectively chosen for me in the sense that the
9 guidance documents issued by the Department of
10 Education's Office for Civil Rights states that the
11 impacts of trauma -- decision-makers need to understand
12 the impacts of trauma. The questions and answers on
13 sexual violence guidance documents addresses that
14 specifically. It goes through what decision-makers'
15 involvement in a grievance process needs to know and
16 one of the things it says is the impact of trauma.

17 I selected the other training facilitated by
18 Mark Peters in many respects to balance that training.
19 Understanding that I had to facilitate the impacts of
20 trauma training, I did not want the council to walk
21 away thinking that this was one perspective. I also
22 wanted them to understand another point of view or
23 additional contextual information.

24 **Q.** Do you attend the training presented by others?

25 **A.** Yes. I attended every training for the Title IX

1 Council.

2 Q. Do you speak at those trainings?

3 A. I begin the training explaining what the function
4 of this content is, why it's been selected. And then
5 in both of those cases I ended the training discussing
6 that this was contextual information and it wasn't
7 intended to be -- that they should always be
8 considering the facts of every case; that this
9 information was solely for the purpose of helping them
10 understand the broader context of the areas that we
11 delve into in Title IX but, again, they should be
12 considering the investigation report in every hearing
13 that they participate in as a panelist.

14 Q. And the mock hearing training, who presents that?

15 A. The mock hearing panel, there's a series of
16 materials that are fictional that have been drafted.
17 It's presented. I act as the Chair, so in Gretchen
18 Schultz's, I acted as Gretchen Schultz in the mock
19 hearing, Jessica Katz acted as the Title IX
20 investigator, and the panelists acted as panelists in
21 that.

22 Q. Are there particular instructions that you
23 offered?

24 A. In the mock hearing?

25 Q. Yes.

1 A. We basically have it run through exactly -- we try
2 to have it run through how an actual panel hearing
3 would run throughout that. So they considered the
4 investigation report and go through a deliberation.
5 They can ask questions of the investigator, et cetera.
6 There were also fictional statements submitted by the
7 fictional complainant and respondent.

8 Q. Do the attendees deliberate?

9 A. Yes. And they deliberate in my presence. So that
10 in the event that they were considering information, I
11 would effectively -- you know, we would talk through
12 why they were considering certain information, what
13 weight they were giving that information, et cetera.

14 Q. In the two-hour training that you mentioned, who
15 presents that session.

16 A. The first two-hour session is presented by me.

17 Q. What do you present?

18 A. So I present in the first hour really an in-depth
19 understanding of Title IX. Specifically, again, what
20 does Title IX cover. We look at the different guidance
21 documents. We look at some of the documents in the
22 Dear Colleague Letter from 2011. I reference the 2014
23 guidance, the questions and answers on sexual violence.
24 We talk about the amendments to the Clery Act a bit.

25 And then in the second hour, again, we talk in

1 more detail about what our complaint process is at
2 Brown. We talk about the standard preponderance of the
3 evidence. We talk about how to identify conflicts that
4 they may have with complainants or respondents.
5 Confidentiality. Again, maintaining the privacy of the
6 parties involved.

7 Q. Were there materials that you presented?

8 A. In the first two hours, there's two separate slide
9 show PowerPoint presentations.

10 MR. RICHARD: Your Honor, I'm marking this
11 exhibit as Exhibit 45, full exhibit.

12 MR. RATCLIFFE: No objection.

13 THE COURT: What number is it?

14 MR. RICHARD: Forty-five.

15 THE COURT: Forty-five will be full.

16 MR. RATCLIFFE: Actually, I have the official
17 exhibit book. You were using your own exhibits.

18 THE COURT: Off the record.

19 (Discussion off the record.)

20 (Plaintiff's Exhibit 45 admitted in full.)

21 MR. RICHARD: Your Honor, may I just show this
22 to the witness?

23 THE COURT: Yes.

24 Q. Showing you what's been marked as Exhibit 45, do
25 you recognize that?

1 A. Yes. This is the first two hours of training that
2 I give to the Title IX Council.

3 Q. That's your PowerPoint presentation?

4 A. Yes.

5 Q. Showing you a particular slide and captioned,
6 "Grievance Process," can you describe the reason why
7 you included the second bullet as to the 60-day
8 guidance?

9 A. The 60-guideline for a typical investigation is
10 contained in a guidance document that was issued by the
11 Office for Civil Rights, the Department of Education.
12 That guideline or similar language is also contained in
13 Brown's complaint process that we aim to complete an
14 investigation in 60 days to the extent possible.

15 Q. Does the 60-day period include panel hearings?

16 A. It includes the panel hearing but does not include
17 the appeal process.

18 Q. The third bullet says, "Trained Decision-makers."

19 do you recall what you presented as to that issue?

20 A. So this was to talk about -- again, reminding them
21 that this is why they were being trained because it was
22 a requirement, but I also talked a bit at that point
23 about the -- Gretchen Schultz also participated in
24 those trainings and so she was there. We talked about
25 that, et cetera. So it was to help them understand why

1 they were being trained.

2 **Q.** The grievance process speaks about adequate,
3 reliable, impartial investigation of complaints. The
4 second bullet refers to timeframes. Are there
5 timeframes set during the process?

6 **A.** In the complaint process, it makes reference to
7 deadlines. For example, the response statement must be
8 submitted within five business days or that the parties
9 have three days to review the final report.

10 To the extent that we can, we designate
11 timeframes with the aim that the whole process will
12 take approximately 60 days, but there isn't a specific
13 timeframe, for example, for the entirety investigation.

14 **Q.** And the slide that you presented captioned
15 "Brown's Policy of Community Standards," what do you
16 recall presenting as to this slide?

17 **A.** Oftentimes when I presented -- so I talked at this
18 point about the fact that, yes, we have a legal
19 obligation, but we also have a cultural obligation to
20 address these cases fairly, impartially, et cetera.

21 So it was -- the reason I included this was that
22 so that people understood that it wasn't just a legal
23 obligation, that we also did this in the work of the
24 Sexual Assault Task Force, which is referenced there,
25 the SATF, the Sexual Assault Task Force report, is

1 again because we were aiming to have a culture in which
2 all members are equally valued.

3 Q. This slide references apparently a topic, "What
4 Are Some of the Barriers to Reporting at Brown." Why
5 did you raise this issue?

6 A. I raised this issue because we do not have a
7 delineated timeframe on how long it can take somebody
8 to submit a complaint, and also because it is often the
9 case that complainants take a long time to submit
10 complaints. So I was providing some information about
11 what those barriers could be.

12 Q. This referenced some of the resources that you
13 mentioned a few moments ago?

14 A. Yes, it does.

15 Q. What is the SHARE Office?

16 A. Share stands for Sexual Harassment and Assault
17 Resources and Education Office, and it -- again, there
18 it says confidential counseling for survivors of
19 interpersonal violence. That's how they advertise
20 their office. Discuss -- and what some of the roles
21 that they could offer to students, so discuss options
22 for moving forward, connecting to additional resources.

23 This slide was intended for the Title IX Council
24 to understand, one, that the Title IX Office is only
25 one of many resources available to students; and two,

1 to also help them understand what the Title IX Office's
2 role was and was not.

3 So it was to provide information, but it wasn't
4 -- that I wasn't, for example, an advocate for a
5 complainant or a respondent but rather providing
6 information. So I always say we're a spoke in a larger
7 wheel sort of thing.

8 Q. And a portion of this slide references reports of
9 both complainants and respondents. Why did you include
10 that?

11 A. People feel strongly in both directions but some
12 might think Brown only provides support for
13 respondents. Historically that has been the sense at
14 Brown.

15 Some people feel like Brown only provides
16 support for complainants. I wanted them to be clear
17 that, for example, we were making academic dean
18 assignments for both complainants and respondents and
19 acknowledgement that this is hard on both students
20 involved.

21 Q. This slide is dealing with feedback of a former
22 process. Why did you include this topic?

23 A. This information I included because it was pulled
24 heavily from the final report of the Sexual Assault
25 Task Force, which synthesized the feedback that they

1 had gathered throughout the '14-'15 academic year and
2 also because, of course, these are things that we want
3 to correct and why the complaint process was drafted
4 the way it was, to correct some of the feedback, the
5 negative feedback that students had offered.

6 Q. What does this slide address?

7 A. This slide addresses basically how we go through
8 the reporting process. So a report at Brown isn't
9 necessarily a complaint. It's that information is
10 shared with the Title IX Office. At that point, the
11 complainant is informed of the University's resources
12 and procedures and we also ask is there a threat to
13 community safety.

14 Complainant can decide to utilize none or all of
15 these options. Again, this is to allow the panel to
16 understand that the complaint process is given as an
17 option among different options available to a
18 particular complainant but that remedial and safety
19 measures are also available.

20 Q. What is an informal resolution?

21 A. An informal resolution, some students come to the
22 Title IX office and are seeking a resolution that
23 doesn't necessarily require a full investigation. So
24 for example, some come and say, I would like this
25 student to agree to move out of my housing and because

1 of this incident that occurred. Assuming that
2 student's willing to and we haven't determined that
3 there's a larger threat to community safety, we would
4 try to accommodate that. It's not something that we
5 typically -- we don't see it in sexual assault cases or
6 allegations of sexual assault but something that often
7 arises or could arise in a gender or sexual harassment
8 case.

9 Q. The last topic in this presentation relates to
10 challenges. Why did you include that?

11 A. It was intended to be an acknowledgment that this
12 is a really complicated and vexing process and that it
13 can take a toll on the Title IX Council members and
14 that it is really hard to look at these cases and to
15 deliberate around these cases, and so I intended to
16 outline what some of those challenges would be.

17 Q. The next slide relates to the Title IX Council
18 Role and Challenges. The first bullet states,
19 "Applying More Likely Than Not Standard," and there are
20 topics underneath it. What do you recall presenting as
21 to this particular topic?

22 A. I presented that the preponderance of the evidence
23 or more likely than not standard is one that Brown is
24 required to use because of the Department of
25 Education's guidance, and also I was helping -- I was

1 trying to make sure that the council understood that we
2 are looking at whether or not there is sufficient
3 information to support a finding of responsible. And
4 if there is not, then finding is not responsible.

5 I wanted them to be clear that they could feel
6 sympathy for a complainant or they could feel that they
7 believed the complainant but that didn't mean that is
8 was necessarily a responsible finding, that they had to
9 ensure that they met the preponderance of the evidence
10 standard in order to come to a finding of responsible.

11 **Q.** The second bullet says, "Understanding How To" --
12 and I believe is a typo -- "Weigh Pieces of
13 Information." What did you say to the panelists about
14 weighing pieces of information?

15 **A.** This is also addressed -- so what I said to them
16 in this training was, for example, that victim impact
17 or mitigation statements by complainants and
18 respondents they could consider in determining an
19 appropriate sanction but only if they had already
20 determined responsibility.

21 So for example, a victim's impact statement can
22 be really compelling and I understood that and
23 acknowledged that, but that I didn't want them to
24 consider a compelling impact statement in order to say,
25 okay, well, there's sufficient information to support a

1 responsible finding.

2 So I was helping them -- I was trying to make
3 sure that every student -- and similarly mitigation.
4 This can be really hard for respondents. Students
5 provide a lot of information about their personal
6 history or background that again can be really
7 compelling. And I wanted the council to understand
8 that this wasn't -- this wasn't information that should
9 be considered in coming to a determination about
10 responsible or not responsible but could be something
11 perhaps that could be considered after that point in a
12 finding or sanction.

13 Q. Last bullet says, "Generally No Direct Interaction
14 with Complainant, Respondent and Witnesses." What did
15 you discuss as to that topic?

16 A. I discussed that the Sexual Assault Task Force had
17 gathered a lot of information, that that was the most
18 difficult part of the hearing process and that that was
19 intended to be addressed in the complaint process. So
20 we reduced that contact and now their direct
21 interaction was largely between the complainant,
22 respondent and witnesses with the investigator, who was
23 in a better position to gather information and to make
24 credibility assessments because she had, or whoever it
25 was, but that these investigators had this expertise

1 and background as opposed to the former process that it
2 would be one student, one faculty member, one staff
3 member that aren't necessarily trained in
4 investigations. They aren't attorneys, perhaps.
5 They've never done an investigation.

6 So I talked about why this was a significant
7 change at Brown, and I was helping them to understand
8 why it happened.

9 MR. RICHARD: Your Honor, at this point I'm
10 going to transition to this case, but I think it would
11 be helpful --

12 THE COURT: So good time to take a break.

13 MR. RICHARD: Thank you.

14 THE COURT: All right. Let's go off the record.
15 (Discussion off the record.)

16 (Adjourned at 4:50 p.m.)
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C E R T I F I C A T I O N

I, Anne M. Clayton, RPR, certify that the foregoing is a true and correct copy of the transcript originally filed with the clerk on August 5, 2016, and incorporating redactions of personal identifiers requested by the following attorney of record: J. Richard Ratcliffe, in accordance with the Judicial Conference policy. Redacted characters appear as a black box in the transcript.

/s/ Anne M. Clayton

Anne M. Clayton, RPR

August 29, 2016

Date